

RETIREMENT BENEFITS FOR BANKRUPTCY JUDGES AND MAGISTRATE JUDGES

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OFFICE OF JUDGES PROGRAMS
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544
Phone: (202) 502-1800

Foreword

This book has been prepared by the Office of Judges Programs to provide a description and analysis of the retirement benefits available to bankruptcy judges and magistrate judges (hereinafter “judges”). It is designed to guide judges through the complexity of the applicable laws and to assist them in the retirement planning process.

The information in this book is based upon the law and policy applicable at the time of publication. The sources, which are subject to change at any time, provide the sole basis for the rights, responsibilities, and benefits described herein.

In addition to this book, the Office of Judges Programs has developed several programs designed to educate federal judges on their retirement options and benefits. Typically, they are held in conjunction with programs sponsored by the Federal Judicial Center.

F or Additional Information

The Article III Judges Division of the Administrative Office administers the retirement and benefit programs for judges. Questions regarding judges' pay, retirement, and other benefit issues should be directed to the Judges Compensation and Benefits Branch of that Division. Assistance may also be obtained from the Office of the Assistant Director for Judges Programs, the Bankruptcy Judges Division, and the Magistrate Judges Division of the Administrative Office. These offices may be reached by telephone or in writing as follows:

OFFICE OF JUDGES PROGRAMS

Peter G. McCabe, <i>Assistant Director</i>	(202) 502-1800 (voice)
Jeffrey A. Hennemuth, <i>Deputy Assistant Director for Policy Development</i>	(202) 502-1755 (fax)

Article III Judges Division

Michael W. Dolan, *Division Chief*
Robert M. Wily, *Deputy Division Chief*
Karen M. Hanchett, *Special Counsel*

Carol S. Sefren, <i>Assistant Deputy Division Chief for Judges Compensation and Benefits</i>	(202) 502-1880 (voice) (202) 502-1811 (fax)
Dan S. Jackson, <i>Chief, Judges Compensation and Benefits Branch</i>	

Bankruptcy Judges Division

Francis F. Szczebak, <i>Division Chief</i>	(202) 502-1900 (voice)
Ralph E. Avery, <i>Deputy Division Chief</i>	(202) 502-1988 (fax)
Raymond E. DiBiagio, <i>Attorney</i>	

Magistrate Judges Division

Thomas C. Hnatowski, <i>Division Chief</i>	(202) 502-1830 (voice)
Charles E. Six, <i>Deputy Division Chief</i>	(202) 502-1744 (fax)
Bret G. Saxe, <i>Attorney</i>	

Mailing Address

Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Other components of the Administrative Office, the Federal Judicial Center, and other agencies of the federal government may be contacted to address specific issues arising in their areas of responsibility. Their telephone numbers, mailing addresses, and web sites are identified elsewhere in this book.

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Introduction

In 1988, the Congress enhanced the salary and retirement benefits of United States bankruptcy judges and magistrate judges as part of a continuing effort to attract and retain judges of the highest caliber. As a result, these judges may choose from a variety of retirement, disability, health insurance, life insurance, survivor, and tax deferred saving plans in planning for the future.

Part One of this book focuses on retirement income for judges and their survivors.

All bankruptcy judges and magistrate judges are covered by the Social Security system, which is discussed in Chapter 5. In addition, they are each covered by one of the following three retirement plans:

- Civil Service Retirement System (CSRS: 5 U.S.C. §§ 8331-8351);
- Federal Employees' Retirement System (FERS: 5 U.S.C. §§ 8401-8479); or
- Judicial Retirement System (JRS: 28 U.S.C. § 377) (available only to full-time judges).

The interaction among these plans and their individual provisions is complicated. In evaluating them, the factors that a judge should consider include:

- cost of the plan;
- minimum age at which an annuity may be paid;
- amount of the annuity provided under the plan;
- adjustments to the annuity for inflation;
- amount of judicial service required before an annuity will "vest;"
- applicable penalties for early retirement;
- restrictions on the practice of law after retirement;
- possibility of an eventual Article III judgeship appointment;
- disability retirement benefits;
- survivor annuities for spouse and eligible children; and
- continuation of health insurance for surviving spouse and dependent children.

Coverage under the three retirement plans is determined by a judge's:

- date of appointment;
- previous federal civilian service; and
- execution of an election to participate.

Upon appointment, a judge is covered automatically under either CSRS Offset or FERS, the two government pension plans that apply to federal employees generally. Chapters 1 and 2 describe CSRS and FERS. All newly-appointed judges are covered under FERS, unless they have completed a specified amount of previous creditable federal civilian service. Individuals with that previous federal service are covered under CSRS Offset.

At any time up to 30 days before leaving office, a judge (other than a part-time magistrate judge), including a judge who is disabled, may elect coverage in person or by power of attorney under JRS. The election forfeits all rights to benefits under CSRS or FERS, including disability and survivor benefits. A partial exception is provided to eligible judges who elect the “hybrid” alternative annuity available under JRS. JRS and the “hybrid” alternative are described in Chapter 3.

Although CSRS and FERS have built-in survivor annuity options, the JRS plan does not. All full-time judges may elect to participate in the Judicial Survivors’ Annuities System (JSAS), which provides a survivor’s annuity to a judge’s spouse and eligible dependent children if the judge dies in office, while receiving a JRS annuity, or after filing a timely election to remain under JSAS prior to receiving a deferred JRS annuity. Judges must elect to join JSAS within six months after taking office, within six months after marriage, within six months after elevation to a higher court, or during an open season specifically authorized by statute. The JSAS program is explained in Chapter 4.

Part Two of the book explains the health and life insurance programs available to individuals performing federal service and also describes the Medicare program and the federal judiciary’s new supplemental benefits programs.

Part Three focuses on retirement planning. Chapter 13 addresses factors to be considered in determining whether and when to elect JRS coverage, comparing the significant features of CSRS, FERS, and JRS.

Part Four discusses the financial consequences facing a retired judge who is contemplating recall service or the practice of law after retirement.

An overview of the special rules applicable to the retirement benefits of Article III judges is provided in Part Five, so that magistrate judges and bankruptcy judges who might be nominated to an Article III judgeship can consider the differences in benefits during their retirement planning. A separate Administrative Office publication, *Senior Status and Retirement for Article III Judges*, Number 4 in the Judges Information Series, is also available from the Office of Judges Programs.

PART ONE

Retirement Income
for Judges
and Their Survivors

1

CIVIL SERVICE

RETIREMENT SYSTEM

The Civil Service Retirement System (CSRS) is a defined benefits retirement plan generally available to federal employees with creditable federal service on or before December 31, 1983. Limited participation in the Thrift Savings Plan is permitted. While most federal employees covered by CSRS are not covered by Social Security, all judges covered under CSRS have been subject to Social Security coverage since 1984.

ELIGIBILITY

“Full CSRS” annuity coverage is available only to judges who were in office on December 31, 1983, and who decided during an open season to retain full CSRS coverage rather than switch to the Federal Employees Retirement System (FERS) or to the “CSRS Offset” plan.

“CSRS Offset” annuity coverage is available to judges who:

- were in office on December 31, 1983, and elected CSRS Offset coverage, or
- were appointed after December 31, 1983, had completed at least five years of federal civilian service creditable under CSRS before January 1, 1987, and did not elect FERS coverage.

All other newly appointed judges are covered automatically under FERS. Some judges otherwise covered under CSRS Offset may be eligible to elect FERS coverage. Judges who were initially appointed after July 1, 1987, following a break in federal service may elect FERS coverage within six months of appointment. FERS is described in Chapter 2.

Full-time judges are also eligible to elect the Judicial Retirement System (JRS) in lieu of CSRS. JRS is described in Chapter 3, and factors to be considered in determining whether and when to elect JRS coverage are discussed in Chapter 13.

DEDUCTIONS

The salary of a judge who is covered under Full CSRS is subject to a deduction for participation in the plan, plus payment of the Social Security tax (OASDI and Medicare). Before January 1, 1999, the deduction for CSRS was 8.0% of salary. The rate increased to 8.25% on January 1, 1999, and to 8.4% on January 1, 2000, and it will increase to 8.5% on January 1, 2001. After December 31, 2002, the deduction will revert to 8.0%.

For example, a judge earning a salary of \$129,996 would contribute \$17,529 annually to participate in the Full CSRS plan (\$4,724.40 for OASDI Social Security ($6.2\% \times \$76,200$, the Social Security wage base for 2000) plus \$1,884.94 for Medicare ($1.45\% \times \$129,996$) plus \$10,919.66 for CSRS ($8.4\% \times \$129,996$)).

A judge under the CSRS Offset plan contributes the percentage of salary applicable to Full CSRS (8.4% in 2000), minus an amount equal to the OASDI tax that is withheld from the judge's salary, until the OASDI wage base is reached. Before January 1, 1999, this deduction was 1.8% of salary. The rate increased to 2.05% on January 1, 1999, and to 2.20% on January 1, 2000, and it will increase to 2.30% on January 1, 2001. After December 31, 2002, the deduction will revert to 1.8%. After the OASDI wage base is reached, the OASDI tax stops and the CSRS deduction increases to the Full CSRS rate for the remainder of the year (8.4% of salary in 2000). In other words, the deduction for Social Security and CSRS Offset is equal to the deduction for Full CSRS. In contrast, judges under Full CSRS pay the Full CSRS rate plus Social Security. (The Medicare tax is additional.)

For example, a judge under the CSRS Offset plan earning a salary of \$129,996 would contribute \$12,804.60 annually:

OASDI Social Security tax	
$6.2\% \times \$76,200$	\$4,724.40
CSRS partial deduction	
$8.4\% - 6.2\% \times \$76,200$	1,676.40
CSRS full deduction over \$76,200	
$8.4\% \times (\$129,996 - \$76,200)$	4,518.86
Medicare tax	
$1.45\% \times \$129,996$	<u>1,884.94</u>
Total	\$12,804.60

COMPUTATION OF ANNUITY

An annuity under CSRS (either Full CSRS or CSRS Offset) is based on two variables:

- the length of an individual's creditable service, and
- the highest average annual salary earned by the individual for any 3 consecutive years of creditable service ("average salary").

Each year of service as a full-time judge, as a part-time judge before April 7, 1986, or as an eligible United States commissioner, and up to five years of creditable military service is credited at 2.5% of a judge's "average salary." (Special rules govern credit for service performed as a part-time magistrate judge after April 7, 1986. They are discussed on page 10 under "Part-Time Service.") Each year of creditable service as a member of Congress or congressional employee and certain service in other (chiefly law enforcement) positions may also be credited at 2.5% of "average salary."

In addition to credit received for the service set forth above, most other periods of service as an employee of the federal government, including other periods of active, honorable military service, are creditable towards a CSRS annuity, but at a lesser rate.

In computing a judge's annuity, the amount of credit received for other federal service depends on how many years of creditable judge service (see above) have been completed. The formula is based on *total* federal service, and the more valuable judge service is counted first.

- If a judge has completed 10 or more years of judge service, each year of other federal service is credited at 2% of a judge's "average salary."

For example, a judge retiring after 12 years of judicial service and 10 years of other federal civilian service would be entitled to a CSRS annuity equal to 50% of "average salary": $(12 \times 2.5\%) + (10 \times 2.0\%) = 50\%$.

- If a judge has completed less than 10 years of judge service, each year of judge service is first credited at 2.5% of "average salary." Other federal service is then credited under a formula based on *the balance* of each 5-year period of total service remaining *after* the judge service has been credited. Under this formula, other federal service is credited at 1.5% of the judge's "average salary" for the first 5 years of service, 1.75% for the next 5 years of service, and 2% for each additional year.

For example, a judge retiring after 4 years of judicial service and 10 years of other federal civilian service would be entitled to a CSRS annuity equal to 28.25% of "average salary." $(4 \times 2.5\%) + (1 \times 1.5\%) + (5 \times 1.75\%) + (4 \times 2.0\%) = 28.25\%$.

The maximum annuity under CSRS is 80% of a judge's "average salary."

A retired judge recalled to serve on a full-time basis under the ad hoc recall regulations may be eligible for a supplemental or recomputed CSRS retirement annuity for such recall service. See Chapter 15.

COST-OF-LIVING ADJUSTMENTS (COLAs)

Under CSRS, a retirement annuity is adjusted annually through COLAs based on the rate of inflation, as measured by the change in the Consumer Price Index.

CREDIT FOR EARLIER GOVERNMENT SERVICE

Under CSRS, all periods of creditable federal service (including military service) occurring before the most recent CSRS-covered service are generally used in determining eligibility to receive a CSRS annuity regardless of whether or not contributions or deposits have been made to the Civil Service Retirement and Disability Fund (CSRDF).

The computation of a CSRS annuity is ordinarily based upon creditable service for which contributions or deposits have been made to the CSRDF. If a refund of contributions was received for federal service which ended before October 1, 1990, however, the service is included in the computation but the annuity is actuarially reduced based on the refunded amount, plus interest, unless a redeposit covering the service is made before the annuity commences. For federal service performed before October 1, 1982, for which no CSRS retirement deductions were made, the service is included in the computation but the annuity is reduced by 10% of the amount that would have been paid to CSRS, plus interest, unless a deposit covering the service is made before the annuity commences.

No deposit is necessary to include active military service performed before January 1957 in the computation of a CSRS annuity (but military service cannot be used in the computation of both military retired pay and a CSRS annuity (see Chapter 7)). A deposit for military service performed from January 1957 on should be made before retiring from office in order for the service to be included in the computation of the CSRS annuity or, in the case of a judge eligible to receive Social Security benefits at age 62 who was first employed in a CSRS-covered position before October 1, 1982, to avoid a reduction in the CSRS annuity.

Certain service as a United States commissioner is creditable under 5 U.S.C. § 8331(1).

CSRS OFFSET FORMULA

A judge who is covered under the Full CSRS plan will receive a full CSRS annuity plus Social Security benefits.

For example, if a judge were eligible to receive a \$60,000 CSRS annuity and \$12,000 in annual Social Security benefits, the judge at retirement would receive a total of \$72,000 a year ($\$60,000 + \$12,000$), indexed for inflation.

The annuity earned under the CSRS Offset plan is the same as that under the Full CSRS plan, but it is reduced by that portion of a judge's Social Security benefits attributable to wages earned as an employee covered by both CSRS and Social Security after December 31, 1983. Alternatively, the CSRS Offset can be computed by multiplying the Social Security benefit by a fraction equal to the number of years of service credited under CSRS Offset performed after December 31, 1983, divided by 40. The

judge's CSRS annuity will be reduced by the lesser of the amounts calculated using the two computation methods.

For example, if a judge at age 62 were eligible to receive a \$60,000 CSRS annuity and \$12,000 in Social Security benefits upon retirement in 2000 after serving in office for 20 years, the CSRS annuity would be reduced by 42.5% of the Social Security benefit, or \$4,800 (*17 years after 1983 divided by 40*) x \$12,000 = \$5,100). At retirement, the judge would receive a reduced CSRS annuity of \$54,900 plus \$12,000 in Social Security benefits, for a total of \$66,900.

IMMEDIATE ANNUITY

A judge is entitled to an immediate, nondisability annuity under CSRS upon meeting one of the following combinations of age and service requirements at the time of separation from office:

<u>Minimum Age</u>	<u>Minimum Years of Service</u>
55	30
60	20
60	10 (judge service only)
62	5

If separation occurs at the end of a term of office, a judge is entitled to an immediate, nondisability annuity ("discontinued service annuity") if:

- the judge has completed at least 20 years of federal creditable service and is at least 50 years old, or
- the judge has completed at least 25 years of federal creditable service at any age.

A form completed by the chief judge of the appointing court must also be submitted to OPM certifying that the judge was not given a written offer of another position within the district. A discontinued service annuity is also payable when a magistrate judge position is abolished by the Judicial Conference.

The amount of the annuity is reduced by 2% for each year (1/6 of 1% for each full month) the judge is less than age 55.

For example, a judge who leaves office at the end of a term at age 53 after completing 24 years of judicial service would receive an immediate CSRS annuity of 57.6% of the "average salary" (*60% (24 x 2.5%) times 96% (100% - (2 x 2%))*).

Under CSRS, employees who retire on an immediate annuity during the first three days of a month begin receiving the annuity the following day. Otherwise, the annuities are effective on the first day of the following month. Employees who retire on a discontinued service annuity begin receiving their annuity the day after separation from service.

DEFERRED ANNUITY

If a judge separates from service before age 62 after having completed at least 5 years of creditable civilian service (but without meeting one of the age and service requirements shown above), the judge would be entitled to a deferred annuity beginning at age 62. The annuity would be computed on the basis of the judge's "average salary" at the time of separation. A judge who transfers to a position not covered by CSRS (including presidential political appointments or elections to participate in the "hybrid" alternative plan of JRS) may also be entitled to a deferred annuity at age 62.

DISABILITY ANNUITY

A judge with at least five years of creditable civilian service who is determined to be disabled under the provisions of 5 U.S.C. § 8337 is entitled to an immediate disability annuity regardless of age. The disability annuity is equal to:

- the annuity earned (without age limitation) by the judge at the time of separation for disability or, if greater,
- the lesser of:
 - (a) 40% of the judge's "average salary," or
 - (b) the annuity that would be paid, projecting the judge's service to age 60 at the same "average salary."

For example, a judge who was disabled after 5 years of service at age 55 would receive a \$32,499 annuity based on an "average salary" of \$129,996 since the earned annuity that would be paid projecting service to age 60 (*10 years of service x 2.5 % per year = 25 % x \$129,996 = \$32,499*) is less than 40% of "average salary" (*\$51,998.40*), but still greater than the annuity otherwise earned by the judge at the time of separation for disability (*5 years x 2.5 % = 12.5 % x \$129,996 = \$16,249.50*). A judge disabled at age 55 after serving 20 years would be entitled to an annuity of \$64,998 (the annuity earned for the 20 years of service without age limitation).

SURVIVOR ANNUITY

A judge's retirement annuity under CSRS is reduced by approximately 10% to provide for a survivor annuity, unless the judge, with his or her spouse's consent, waives a survivor annuity in writing at the time the judge retires or the spouse agrees to a lesser annuity. The value of the survivor benefit is normally greater than the cost of the reduction in the annuity. To qualify for a survivor annuity, a surviving spouse must have been married to the judge for at least nine months before the judge's death unless there is a child born of the marriage or the judge's death is accidental. The

surviving spouse's annuity terminates upon the spouse's death or if the spouse remarries before age 55 and the marriage to the judge had lasted fewer than 30 years.

If a judge dies in office after having completed at least 18 months of service, the surviving spouse is entitled to receive an annuity equal to:

- 55% of the earned annuity benefit of the judge, or, if greater,
- the lesser of:
 - (a) 55% of 40% of the judge's "average salary," or
 - (b) 55% of the judge's annuity, calculated by projecting the judge's service to age 60 at the same "average salary."

For example, the surviving spouse of a judge who dies in office at age 55 after 5 years of service would be entitled to an annuity of \$17,292.55 based on the deceased judge's "average salary" of \$129,996 (*projecting service to age 60—10 years of service* $\times 2.5\% = 25\% \times \$129,996 = \$32,499 \times 55\% = \$17,874.45$). The amount calculated under the projected service provisions is the lesser of the two provisions ($40\% \times \$125,764 = \$50,305.60 \times 55\% = \$27,668.08$), but still greater than the accrued annuity benefit after 5 years of service ($5 \text{ years} \times 2.5\% = 12.5\% \times \$129,996 = \$16,249.50 \times 55\% = \$8,937.23$).

If a judge dies after leaving office and while receiving a CSRS retirement annuity, the surviving spouse will normally receive a survivor annuity equal to 55% of the judge's annuity before reduction for the survivor benefit. A judge who is entitled to receive a deferred CSRS annuity loses survivor coverage until he or she turns age 62 and then files an application with the Office of Personnel Management (OPM) to receive a deferred annuity with survivor coverage. If the judge dies after filing the application but before receiving the retirement annuity, the surviving spouse is entitled to receive a survivor annuity equal to 55% of the judge's unreduced deferred annuity. Alternatively, if the surviving spouse is the designated beneficiary, he or she may elect to receive a lump-sum refund of all CSRS contributions *without* interest. If the judge dies before filing the requisite application, a lump-sum refund is paid in accordance with any designation of beneficiary filed with OPM, or in the order of precedence set forth in 5 U.S.C. § 8342(c). (A judge can file, change, or cancel a designation by submitting a designation of beneficiary form to the Office of Personnel Management, Retirement Operations Center, Boyers, PA, 16017.)

Under certain circumstances, a former spouse may be entitled to receive a survivor annuity if the judge elects to provide one, or if it is expressly provided in the decree of divorce or annulment or a court-approved marital property settlement.

A survivor annuity is also provided to eligible dependent children who are unmarried and (1) under age 18, (2) under age 22 if a full-time student, or (3) any age, if disabled before reaching age 18. The amount of the annuity is indexed for inflation

and varies depending upon the number of eligible dependents. For 2000, the annuity benefit is \$4,272 per child if there is a surviving parent, and \$5,136 per child if there is no surviving parent. With more than three dependents, the maximum total of the dependent children's annuities for that year is \$12,816 if there is a surviving parent, and \$15,408 if there is no surviving parent. As with the annuity for a surviving spouse, a survivor annuity for a dependent child terminates upon the child's death.

PART-TIME SERVICE

Service as a part-time judge performed before April 7, 1986, is credited at the same rate as service as a full-time judge. Service as a part-time magistrate judge on or after April 7, 1986, however, is creditable under 5 U.S.C. § 8339(p) at a reduced rate. In accordance with OPM regulations, the annuity provided to a part-time federal employee for service on or after April 7, 1986, is based on the "average salary" of a full-time employee. The creditable service after April 7, 1986, is prorated to credit only the proportion that a judge's part-time service bears to full-time service. The proration is used only to compute the annuity, not to determine the years of service needed for retirement eligibility.

For example, a part-time judge under CSRS with 14 years of service after April 7, 1986, who earns an annual salary of \$32,749 (approximately 25% of the salary of a full-time judge), would be entitled to an annuity roughly equal to 25% of the annuity payable to a full-time judge. Assuming a full-time average salary of \$129,996, the annuity payable to the part-time magistrate judge would be approximately \$4,550 per year ($\$129,996 \times 1\% \times 14 \text{ (years)} = \$18,199 \times 25\% = \$4,550$).

The 1986 change in the method of computation was intended to close a loophole that had permitted a longtime part-time federal employee to earn an annuity equal to that earned by a longtime full-time employee. A longtime part-time employee in the past had been able to obtain a "windfall" by accepting a full-time position for the last three years before retirement, thereby applying many years of creditable part-time service against a full-time "average salary."

LUMP-SUM REFUNDS

A judge who leaves service before becoming eligible to receive a CSRS annuity immediately upon separation may elect to be paid a lump-sum payment (without interest) of all contributions paid to the CSRS plan, provided that the application for a refund is filed more than 31 days before the judge becomes eligible to receive a CSRS annuity. See 5 U.S.C. § 8342. An election to receive a lump-sum refund of contributions voids all annuity rights unless the judge is subsequently reemployed in federal service to a position covered under CSRS.

VOLUNTARY CONTRIBUTIONS

Individuals covered by Full CSRS or the CSRS Offset plan may establish a voluntary contribution account to obtain an additional retirement annuity. A Standard Form 2804 (Application to Make Voluntary Contributions) should be filed with the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division.

Voluntary contributions are made in multiples of \$25, and may not exceed 10% of a judge's life-time earnings for federal service at the time of the contribution. The interest on voluntary contributions is compounded annually on December 31, at a rate determined by the Treasury Department. For 2000, the interest rate is 5.875%. The accrual of interest generally ceases upon a judge's election of JRS or separation from office, unless he or she is entitled to a deferred CSRS annuity.

Each \$100 in the voluntary contribution account provides the judge an additional annuity of \$7.00 per year at retirement, plus \$.20 for each full year the judge is over age 55 at the time of retirement. The additional annuity is reduced if the judge elects to provide a survivor annuity. A judge may request a refund of all voluntary contributions, with interest, at any time before receiving an annuity based upon the account. The interest accrued in a voluntary contributions account may be rolled over to an Individual Retirement Account (IRA) or other tax-qualified retirement plan.

FURTHER INFORMATION

OPM administers CSRS and interprets the statutes and regulations pertaining to that program. Information on CSRS is available from OPM on its Internet website (<http://www.opm.gov>).

Although OPM retains ultimate administrative authority, questions concerning the CSRS program and benefits may be addressed initially to the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, at (202) 502-1880. The amount of a judge's anticipated CSRS annuity can be calculated by the Judges Compensation and Benefits Branch upon request.

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FEDERAL EMPLOYEES' RETIREMENT SYSTEM

The Federal Employees' Retirement System (FERS) was established by Congress in 1986 to provide a more portable retirement plan for federal workers with total benefits roughly comparable to those provided under CSRS. FERS consists of three elements:

- Social Security coverage;
- a defined benefits plan that provides an annuity benefit based on the number of creditable years of service; and
- voluntary participation in the Thrift Savings Plan (TSP) that provides matching government contributions.

Unlike CSRS, FERS provides no enhanced annuity computation for service as a judge beyond that provided for federal employees generally.

ELIGIBILITY

All judges appointed after December 31, 1983, without prior government service, are covered automatically under FERS. Judges appointed after that date who had completed at least five years of civilian federal service before January 1, 1987, may elect FERS coverage within six months of appointment. Otherwise, they are covered under the CSRS Offset plan.

DEFINED BENEFITS ANNUITY

Under the defined benefits component of FERS, each year of creditable federal service (including military service) counts toward an annuity at the rate of:

- 1% of "average salary;" or
- 1.1% of average salary if at the time of separation the individual has completed 20 or more years of service and is at least age 62.

If the judge is a former member of Congress or a former congressional employee with at least 5 years of congressional service, the annuity is computed at 1.7% of average salary for the first 20 years of that service.

For purposes of calculating the FERS defined benefit annuity, “average salary” means the highest average salary earned by the individual for any three consecutive years of creditable service.

For example, a judge leaving office after completing 15 years of creditable federal service would receive an annuity under FERS equal to 15% of the “average salary,” plus Social Security and Thrift Savings Plan benefits.

A retired judge recalled to serve on a full-time basis under the ad hoc recall regulations may be eligible for a supplemental or recomputed FERS retirement annuity for such recall service (see Chapter 15).

COST-OF-LIVING ADJUSTMENTS

Generally, under FERS, the defined benefits annuity is not adjusted for inflation before the judge attains age 62. Beginning at age 62, the annuity is adjusted annually for inflation based on the rise in the Consumer Price Index (CPI), less 1% if the rate of inflation is 3% or more. If the rate of inflation is less than 2% the annual increase in the annuity is the same as the increase in the CPI. If the CPI is between 2% and 3%, the annuity is increased by a flat 2%.

SOCIAL SECURITY

A major component of FERS is mandatory Social Security (i.e., OASDI) coverage. The contributions and eventual benefits under Social Security are fully indexed for inflation and change annually. The principal elements of Social Security are discussed in Chapter 5.

THRIFT SAVINGS PLAN

Personal contributions to the TSP are an important part of the retirement benefits package provided under FERS. The FERS defined benefit annuity plus Social Security benefits are less than the annuity provided under CSRS for a comparable period of service. The difference in overall benefits is intended to be offset by participation in and earnings from the TSP. The principal elements of the TSP are discussed in Chapter 6.

DEDUCTIONS

Before January 1, 1999, a deduction of 0.8% was withheld from the salary of a judge as the contribution under FERS for the defined benefits plan. The rate increased to 1.05% on January 1, 1999, and to 1.2% on January 1, 2000, and it will

increase to 1.3% on January 1, 2001. After December 31, 2002, the deduction will revert to 0.8%. A judge's salary is also subject to Social Security (OASDI and Medicare) taxes, and the judge may contribute to the TSP.

For example, under FERS the annual salary of a judge earning \$129,996 who chooses to contribute 5% of salary to the TSP would be subject to the following deductions:

OASDI Social Security tax	
6.2% x \$76,200 =	\$4,724.40
Medicare tax	
1.45% x \$129,996 =	\$1,884.94
FERS deduction	
1.2% x \$129,996 =	\$1,559.95
Thrift Savings Plan	
5.0% x \$129,996 =	<u>\$6,499.80</u>
Total	\$14,669.09

IMMEDIATE ANNUITY

A judge under FERS is entitled to an unreduced annuity:

- at age 62 with at least 5 years of service,
- at age 60 with 20 years of service,
- at age 50 with 20 years of service or at any age with at least 25 years of service, provided that the annuity is based upon discontinued service, or
- at the minimum retirement age with 30 years of service. (The minimum retirement age is 55-57, depending upon the year of a judge's birth. See 5 U.S.C. § 8412(h).)

A discontinued service annuity is available upon separation at the end of a term of office or, in the case of a magistrate judge, upon abolishment of a position by the Judicial Conference. In addition to meeting age and service requirements, a form must be submitted to OPM certifying that the judge was not given a written offer of another position within the district.

A reduced annuity is provided for employees who complete at least 10 years of service and have reached the minimum retirement age of 55-57.

Under FERS, payment of immediate annuities generally begins on the first day of the month following retirement. Discontinued service annuities are payable the day after separation from service.

SPECIAL SUPPLEMENT

Generally, FERS provides a special annuity supplement for employees who retire before age 62, the earliest time Social Security (OASDI) benefits may commence. To

account for the years before the retiree may receive Social Security benefits, the employee's FERS annuity is increased by a special supplement that is paid until age 62. The supplement is based on the eventual amount of Social Security benefits (including any reduction under the "earnings test—see discussion at page 32) attributable to service under FERS that would otherwise be payable at age 62. The annuity supplement terminates at age 62, whether or not the retiree is receiving Social Security benefits at that time.

DEFERRED ANNUITY

A judge who separates before age 62 with at least 5 years but less than 10 years of federal service may elect a deferred annuity payable at age 62. A judge who separates before reaching the minimum retirement age with at least 10 years of federal service may elect a deferred, reduced annuity, payable beginning at the minimum retirement age (55-57).

DISABILITY ANNUITY

A judge with at least 18 months of creditable service under FERS who is determined by the Office of Personnel Management to be disabled under the provisions of 5 U.S.C. § 8451 is entitled to an immediate disability annuity. If the disability annuity commences before age 62, the annuity during the first year is equal to 60% of the judge's "average salary," minus any Social Security disability benefit payable. Thereafter, the judge is entitled to 40% of the "average salary," minus 60% of any Social Security benefit payable.

Upon reaching age 62, the disability annuity of a judge will be recomputed to include credit for all periods of time before the judge's 62nd birthday, as if the judge had been working. The "average salary" used in recomputing the annuity will reflect all FERS cost-of-living adjustments made during the period the judge was receiving a disability annuity.

DEATH BENEFITS

If a judge dies in office while covered under FERS after completing at least 18 months of creditable service, the judge's surviving spouse is entitled to a basic employee death benefit consisting of a set dollar amount, plus the higher of:

- one-half the annual salary of the judge, or
- one-half the "average salary" of the judge.

The set dollar amount, which is indexed each year for inflation, is \$25,596 in 2000. The basic employee death benefit is payable as a lump-sum, unless the surviving spouse elects to receive monthly payments over a three-year period after the judge's death. Under certain circumstances, a former spouse may be entitled to receive a

portion of the death benefit if it is expressly provided in the decree of divorce or annulment or a court-approved marital property settlement.

SURVIVOR ANNUITY

A judge's defined benefit retirement annuity under FERS is reduced by 10% to provide for a survivor annuity, unless the judge, with his or her spouse's consent, waives a survivor annuity in writing at the time the judge retires or the spouse agrees to a lesser annuity. The value of the survivor benefit is normally greater than the cost of the reduction in the annuity. To qualify for a survivor annuity, the surviving spouse must have been married to the judge for at least nine months before the judge's death unless there is a child born of the marriage or the judge's death is accidental. The surviving spouse's annuity terminates upon the spouse's death or if the spouse remarries before age 55 and the marriage to the judge had lasted fewer than 30 years.

If a judge dies in office after completing 10 or more years of service, the judge's surviving spouse is entitled to an annuity equal to 50% of the judge's accrued annuity benefit. This is in addition to the basic employee death benefit. There is no reduction in the spouse's annuity for any Social Security benefit that may be payable.

If a judge dies while receiving a FERS retirement annuity, the surviving spouse is entitled to a survivor annuity equal to 50% of the judge's annuity before reduction for the survivor benefit. A surviving spouse under age 60 who is not yet eligible for Social Security benefits is also entitled to a special supplement until attaining age 60.

A judge with at least 5 years but less than 10 years of service who is eligible for a deferred FERS annuity loses survivor coverage after separating from service until the judge turns age 62 and files an application with the Office of Personnel Management for a deferred annuity with survivor coverage. Once the application is filed, the spouse would be entitled to a survivor annuity equal to 50% of the unreduced deferred annuity. If the judge dies before reaching age 62 or filing the requisite application, a lump-sum refund (*with* interest) of all FERS contributions is paid in accordance with any designation of beneficiary filed with OPM, or in the order of precedence set forth in 5 U.S.C. § 8424(e). (A judge can file, change or cancel a designation by submitting a designation of beneficiary form to the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, or, if the judge has separated or retired from service, to the Office of Personnel Management, FERS Retirement Operations Center, P.O. Box 200, Boyers, PA, 16017.)

If a judge entitled to a deferred FERS retirement annuity based on 10 or more years of service dies after leaving office but before applying for the annuity, the judge's surviving spouse, if married to the judge at the time the judge separated from FERS-covered service, is entitled to a survivor annuity equal to 50% of the judge's accrued

unreduced annuity. The surviving spouse's annuity commences when the judge would have been eligible for an unreduced annuity (*i.e.*, on the day the judge would have turned age 55-57, 60, or 62, depending the judge's total service under FERS). Alternatively, the surviving spouse may elect to receive a reduced survivor annuity commencing on the day after the judge's death, or, if the spouse is the designated beneficiary (see above), to receive a lump-sum refund (*with* interest) of all FERS contributions.

Under certain circumstances, a former spouse may be entitled to receive a survivor annuity if the judge elects to provide one, or if it is expressly provided in the decree of divorce or annulment or a court-approved marital property settlement.

Survivor benefits are also provided to eligible dependent children. Generally, FERS benefits for surviving children are the same as those under CSRS, but they are reduced by any Social Security benefits to which the children are entitled. As a result, only Social Security benefits are usually payable to surviving children.

PART-TIME SERVICE

Service as a part-time judge is prorated over the entire period of creditable FERS service (including military service credited under FERS). See 5 U.S.C. § 8415(e). In accordance with OPM regulations, the annuity provided to a part-time federal employee under FERS is based on the "average salary" of a full-time employee in the same position. The service, however, is prorated to credit only the proportion that a judge's part-time service bears to full-time service.

For example, a part-time judge with 14 years of service who earns an annual salary of \$32,749 (approximately 25% of the salary of a full-time judge) would be entitled to an annuity roughly equal to 25% of the annuity payable to a full-time judge. Assuming a full-time average salary of \$129,996, the annuity payable to the part-time magistrate judge would be approximately \$4,087 per year ($\$129,996 \times 1\% \times 14 \text{ (years)} = \$18,199 \times 25\% = \$4,550$).

If the judge's FERS annuity includes a CSRS annuity component, part-time service under the CSRS component is computed using CSRS rules, and part-time service under the FERS component is computed using the FERS rules.

LUMP-SUM REFUNDS

A judge who leaves federal service, transfers to a federal position not covered by FERS (such as an Article III judgeship or a political appointment), or elects to be covered by straight JRS before becoming eligible to receive a FERS annuity may apply for a refund of all contributions paid to the FERS defined benefits plan with interest at the market rate. The judge permanently forfeits all FERS retirement rights for the

service upon which the refund was based. Thus, even if the judge subsequently reenters federal service in a position covered by FERS, the judge cannot repay the refunded money to reestablish credit for the refunded service. See 5 U.S.C. § 8424(a).

FURTHER INFORMATION

OPM administers FERS and interprets the statutes and regulations pertaining to that program. Information on FERS is available from OPM on its Internet website (<http://www.opm.gov>).

Although OPM retains ultimate administrative authority, questions concerning the FERS program may be addressed initially to the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, at (202) 502-1880. The amount of a judge's anticipated FERS annuity can be calculated by the Judges Compensation and Benefits Branch upon request.

3

JUDICIAL RETIREMENT SYSTEM

The Congress enacted the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (referred to in this chapter as "the Act") as part of a continuing effort to enhance the salary and benefits of full-time magistrate judges and bankruptcy judges. The Act created the Judicial Retirement System (JRS), codified at 28 U.S.C. § 377, for those judges as an alternative to CSRS and FERS.

The majority of eligible judges elect JRS coverage in lieu of CSRS or FERS at some point in their career. Chapter 13 contains a discussion of factors that should be considered by a judge in determining whether and when to elect JRS.

ELIGIBILITY AND ELECTION

A judge must make an election to participate in JRS. The election is generally irrevocable and can be made at any time while the judge is in office, as long as it is made at least 30 days before the date the judge leaves office. A JRS election form (PER 70) must be received by the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, no later than 30 days before leaving office.

Only active service performed as a full-time bankruptcy judge or a full-time magistrate judge on or after October 1, 1979, is creditable under JRS. Service performed by a retired judge recalled to active service under 28 U.S.C. §§ 155(b) or 636(h) is not creditable under JRS.

An election to participate fully and receive a "straight" annuity under JRS voids all rights to annuities under CSRS or FERS, including disability and survivor annuities. For judges in office when the Act took effect on November 15, 1988, specified service may still be credited under CSRS or FERS if the judge elects to receive a "hybrid" alternative JRS annuity.

Upon making an election to participate in JRS, a judge is entitled to a refund of prior contributions to the CSRS or FERS retirement funds. CSRS contributions are refunded without interest, while FERS contributions are refunded with market-rate interest.

DEDUCTIONS

Beginning with the first pay period after the Administrative Office receives the JRS election notice, the judge's salary is subject to a deduction equal to 1% of gross salary. These deductions cease after the judge has completed 14 years of service, or has made a combination of payroll deductions and/or deposits for past creditable service covering 14 years. In other words, once a judge has contributed 1% of salary to JRS for 14 years, no further salary deductions or deposits are required.

Since many judges delay their JRS election until shortly before their retirement, they may need to make a deposit for past creditable service to reach the 14-year contribution limit. A deposit for past service may be made at any time after the JRS election, but no later than 30 days before the judge leaves office. No interest is assessed on a deposit for past service, and the deposit may be paid in a lump sum or installments.

COMPUTATION OF ANNUITY

Straight Annuity

A bankruptcy judge or magistrate judge must serve a minimum of eight years as a judge to qualify for a "straight" JRS annuity. The annuity is equal to that proportion of the salary being received at the time the judge leaves office that the total number of years of creditable judicial service, not exceeding 14, bears to 14. After 8 years of service, the annuity would be equal to 8/14, or approximately 57%, of the salary of the office at the time of retirement. The potential annuity increases with additional years of service (e.g., 9/14, 10/14, etc.) until 14 years of service, at which time the judge is entitled to an annuity equal to the full salary of the office. Each full month of service is credited as 1/12 of a year.

For example, a judge who retires under JRS after 12 years and 3 months of creditable service as a judge would be entitled to an annuity of $12\frac{3}{4}/14$, or 87.5%, of the salary of the office at the time the judge retires.

"Hybrid" Alternative Annuity

Full-time judges who were serving as a full-time or part-time judge on November 15, 1988, may elect a "hybrid" alternative annuity. Under this option, a judge is entitled to a proportionate JRS annuity for creditable full-time judicial service designated by the judge, on or after October 1, 1979, in addition to any CSRS or FERS

annuity that may be payable for federal service occurring before the date designated by the judge. The judge must have had at least five years of civilian service before the designation date for a CSRS or FERS annuity to vest. A refund of contributions to CSRS or FERS is allowed for only the period designated as JRS service for purposes of the “hybrid” annuity calculation.

Unlike a “straight” JRS annuity, which requires a minimum of eight years of judicial service to vest, there is no minimum number of years required for the JRS portion of a “hybrid” alternative annuity to vest. The JRS portion of a “hybrid” annuity is calculated in the same manner as a “straight” JRS annuity.

The CSRS or FERS portion of the “hybrid” alternative annuity is based on the “average salary” for the highest three consecutive years preceding the years being credited towards the annuity under JRS.

For example, a judge who designates judicial service after January 1, 1986, as creditable under JRS would draw a CSRS or FERS annuity computed on the basis of the average salary of the office during the preceding three-year period of 1983 to 1985. (The average salary for that period was \$66,033 per year.)

An initial aggregate “hybrid” alternative annuity may not exceed 100% of the salary of the office on the day before the judge leaves office. Once the annuity commences, it is increased by subsequent COLAs, but may not exceed the salary of an active judge.

COST-OF-LIVING ADJUSTMENTS

A judge receiving an annuity under JRS is entitled to the same annual COLAs as an annuitant under CSRS, but the annuity may not exceed the current salary of the position from which the judge has retired. Future COLAs under JRS are forfeited if the judge notifies the Administrative Office in writing that he or she intends to practice law. See “Forfeiture of Annuity or Cost-of-Living Adjustments” on page 24.

IMMEDIATE ANNUITY

A JRS annuity is not payable until age 65. A judge is eligible for an unreduced “straight” JRS annuity at age 65 with a minimum of 8 years of service.

While there is no minimum service requirement for the JRS portion of a “hybrid” annuity, that portion of the annuity is not payable until the judge reaches age 65. A judge retiring with a “hybrid” annuity before age 65 may, however, receive immediate payment of the CSRS or FERS portion of the annuity. A judge retiring at age 62 or older is eligible for the CSRS or FERS portion of the annuity immediately. If the judge retires before age 62 and meets the requisite age and years of service requirements for an immediate annuity under CSRS or FERS on the day *before* judicial service began to be credited under JRS, the judge can receive an immediate CSRS or FERS annuity.

Otherwise, a judge retiring before age 62 will not receive the CSRS or FERS portion of the annuity until reaching age 62.

DEFERRED ANNUITY

If a judge leaves office before age 65, payment of a nondisability annuity under JRS is deferred until the judge reaches age 65. A JRS nondisability annuity is reduced by 2% for each year (calculated on a monthly basis) that a judge is less than age 65 at the time of separation. The maximum reduction is 20%. The early separation reduction applies to a “fully vested” annuity earned by a judge after up to 14 years of creditable service under JRS, and to the JRS portion of a “hybrid” annuity.

For example, if a judge leaves office at age 62 after 12 years and 3 months of creditable judicial service, the judge’s annuity under JRS would be 82.25% of final salary (87.5% (12¼/14) times 94 % (100%-6%)).

The early separation reduction does not apply if, at the expiration of a term of office, a judge is not reappointed after having filed a Notice of Willingness to be Reappointed (Form PER 74). The completed form must be received by the chief judge of the district court in the case of a magistrate judge or the chief judge of the court of appeals in the case of a bankruptcy judge, no earlier than nine months but no later than six months before the expiration of the term of office.

DISABILITY ANNUITY

A judge with at least five years of creditable JRS service who is determined to be disabled under the provisions of 28 U.S.C. § 377(d) is eligible for an immediate disability annuity under JRS or the JRS portion of the “hybrid” alternative. The procedures for establishing eligibility for a disability annuity may be found in Section 7 of the Regulations of the Director [of the Administrative Office] Implementing the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 (hereafter “Director’s Regulations”), set forth at Appendix C.

If the judge has completed at least 5 years, but less than 10 years of creditable service under JRS, the disability annuity is equal to 40% of the salary of the office. If, however, the judge has completed 10 or more years of service, the disability annuity is equal to that proportion of the salary of the office that the aggregate number of years of service bears to 14.

For example, a judge with an annual salary of \$129,996 who retires on disability after completing 9 years of judicial service would be entitled to an annuity of \$51,998.40 (40% x \$129,996), while a judge who is disabled after 12 years and 3 months of service would receive an annuity of \$113,746.50 (87.5% (12¼/14) x \$129,996).

SURVIVOR ANNUITY

No survivor annuity is provided under JRS. If a judge dies before receiving a JRS annuity, the judge's contributions to JRS are refunded with interest in accordance with the order of precedence set forth in Section 13 of the Director's Regulations. If a judge dies while receiving a JRS annuity, the beneficiary is entitled to any accrued but unpaid annuity payment, and any difference between the judge's contributions to JRS (with interest) and the total annuity payments that have been made. (In addition, in the absence of a survivor annuity, a surviving spouse will not be eligible to continue health insurance coverage under the Federal Employees Health Benefits program.)

A judge may acquire survivor coverage for his or her spouse and eligible children by participating in the Judicial Survivors' Annuities System (JSAS), but must elect to participate in that program within six months of appointment to office or within six months of marriage. JSAS is discussed in Chapter 4.

The spouse and dependents of a judge who elects the "hybrid" alternative annuity may be eligible for survivor benefits under the CSRS or FERS portion of the aggregate annuity under the same conditions as other federal employees under CSRS or FERS. Survivor benefits under CSRS and FERS are described in Chapters 1 and 2, respectively.

For example, if a judge dies while receiving a "hybrid" alternative annuity composed of a \$20,000 CSRS annuity (reduced for a survivor benefit) and a \$80,000 JRS annuity, the spouse would be entitled to a survivor annuity under CSRS equal to \$12,057.65 ($55\% \times \$21,923$ (*unreduced civil service annuity*)).

The CSRS or FERS survivor annuity is based on service occurring before the date designated by the judge for JRS coverage. If a judge has elected to participate in JSAS, the surviving spouse is also eligible for a JSAS annuity based on periods of service designated for JRS.

REDUCTION OF JRS ANNUITY FOR GOVERNMENT CONTRIBUTIONS TO TSP

For judges covered under FERS, the government contributes up to 5% of salary to the Thrift Savings Program (TSP) on behalf of the judge, 1% automatically and up to 4% as matching contributions. The principal elements of TSP are discussed in Chapter 6. If a judge elects JRS, the judge's JRS annuity will be reduced by an amount representing all government contributions to the judge's TSP account during his or her service as a full-time judge. The government contributions are recovered by reducing the JRS annuity over 12 months, or, where this offset would reduce the monthly annuity by over 50%, over 24 months. The offset does not include earnings attributable to the government's contributions.

The offset begins upon receipt of the JRS annuity unless the judge timely notifies the Administrative Office he or she will not receive a TSP distribution until after the JRS annuity begins. In that case the offset of the JRS annuity will begin upon receipt of a TSP distribution, which can be delayed until April 1 of the year following the year the judge reaches age 70½ (or date of retirement if later).

LUMP-SUM REFUNDS

A judge who leaves service may elect to be paid a lump-sum credit with interest of all JRS contributions and deposits, provided that the judge:

- is not reappointed as bankruptcy judge or magistrate judge for at least 31 consecutive days, and
- files an application for a refund with the Administrative Office more than 31 days before becoming eligible to receive a JRS annuity.

An election to receive a lump-sum payment voids all JRS annuity rights unless the judge is subsequently appointed to serve as a bankruptcy judge or full-time magistrate judge.

FORFEITURE OF ANNUITY OR COST-OF-LIVING ADJUSTMENTS

A judge who retires under JRS and practices law without first filing an Election to Practice Law (form PER 75), or practices law before the election becomes effective, forfeits the entire JRS annuity for life. A judge who files an election to practice law form is entitled to a JRS annuity, but forfeits any future COLAs on that annuity after the election becomes effective. The practice of law after retirement is discussed in Chapter 16.

All rights to receive a JRS annuity are forfeited during any period in which compensation is received by a retired judge “for civil office or employment under the United States Government” (other than for service as a recalled judge). 28 U.S.C. § 377(m)(3).

FURTHER INFORMATION

The Administrative Office administers the JRS program and interprets the pertinent statute and regulations. Questions concerning JRS should be addressed to the Judges Compensation and Benefits Branch of the Administrative Office’s Article III Judges Division, at (202) 502-1880. Details on JRS, including descriptions of the computation of the annuity, the age and service vesting requirements, and the disability annuity, are contained in the Director’s Regulations set forth in Appendix C.

4

JUDICIAL

SURVIVORS'

ANNUITIES SYSTEM

Under the Judicial Survivors' Annuities System (JSAS), a full-time judge's eligible spouse, former spouse, and/or dependent children are entitled to a survivor's annuity if the judge dies while in office, while receiving a JRS annuity, or after filing a timely election to remain under JSAS before receiving a deferred JRS annuity. The provisions of JSAS are set forth in 28 U.S.C. § 376. In October 1992, legislation was enacted that significantly improved the JSAS program by reducing the cost of participation and enhancing benefits. A detailed discussion of JSAS is contained in volume III of the *Guide to Judiciary Policies and Procedures*. This survivor plan is essentially the same as that available to Article III judges, although there are some important exceptions.

NOTE

For a spouse or other eligible survivor to continue coverage under the Federal Employees Health Benefits program after the judge's death, the judge must have elected JSAS and met the vesting requirements for a JSAS benefit, or the judge must have otherwise provided for a survivor annuity under a retirement system for federal employees (e.g., the Civil Service Retirement System or the Federal Employees' Retirement System).

ELECTION

A judge may elect to participate in JSAS only within:

- 6 months after taking office;
- 6 months after marriage;
- 6 months after elevation to a higher office; or
- an open season specifically authorized by statute.

The JSAS election is independent of an election to participate in JRS, although the two are closely linked. A spouse is entitled to a survivor's annuity under JSAS only if

the judge dies while in office, while receiving a JRS annuity, or after filing a timely election to remain under JSAS prior to receiving a deferred JRS annuity. See “Separation from Office before Age 65” on page 29.

An election to participate in JSAS is made by completing AO Form 162 (Election to Participate in the Judicial Survivors’ Annuities System) and submitting it to the Judges Compensation and Benefits Branch, Article III Judges Division of the Administrative Office. A judge should also submit Form PER 42 (Designation of Beneficiary) if he or she does not wish to have any lump-sum refund of JSAS contributions and/or deposits paid to beneficiaries according to the order of precedence set forth in 28 U.S.C. § 376(o) (see discussion at page 30).

A judge may revoke the election to participate in JSAS only if the marriage ends by the death of the judge’s spouse or upon divorce. If the marriage ends by divorce, the revocation is subject to any court order relating to JSAS benefits. (Also, under certain circumstances, a former spouse may be entitled to receive a JSAS annuity if the judge elects to provide one, or if it is expressly provided in the decree of divorce or annulment or a court-approved marital property settlement.) Upon revocation, payroll contributions will stop, but the money contributed to the Judicial Survivors’ Annuities Fund ordinarily will not be refunded until the judge’s death. If a judge revokes the election and later remarries, the judge must reelect JSAS coverage in order for the surviving spouse and eligible children to receive a JSAS annuity.

An Article III judge, magistrate judge, or bankruptcy judge who already participates in JSAS is not required to “reelect” JSAS coverage if appointed to another judgeship covered under JSAS without a break in service. Deductions from the judge’s new salary will continue at the same contribution rate (see below).

ELIGIBILITY

A judge’s JSAS benefit is vested (*i.e.*, his or her eligible survivors become entitled to annuities in the event of the judge’s death) when the judge has completed at least 18 months of creditable civilian service for which payroll contributions and/or deposits have been made. If a judge dies as a result of assassination before completing 18 months of creditable civilian service, annuities are still payable to the eligible survivors if the judge had made contributions and/or deposits for the service actually completed, and deductions are made from the annuities for the remaining amount needed to cover 18 months of service.

COST

Contribution Rate

For judges in active service, the annual cost of JSAS is 2.2% of salary. After retirement, the contribution is withheld from the JRS annuity, but the rate increases to 3.5%

of the annuity. For retired judges recalled to service, the annual contribution rate is 2.2% of their total recall compensation (annuity and salary).

Congressional Study

Under the 1992 amendments to JSAS, the Comptroller General must report to the Congress every 3 years on whether contributions to JSAS by all judges represent 50% of the costs of the program and if not, what adjustments in the contribution rate might be appropriate. Historically, whenever the contribution rates under JSAS or other federal employee benefits programs have changed, the participants in the program have been provided an opportunity to withdraw from the program, and judges who previously waived participation in JSAS have been provided an opportunity to elect participation in the program.

COMPUTATION OF ANNUITY

Spousal Annuity

A judge's spouse is eligible to receive a vested JSAS benefit if the spouse has been married to the judge for at least one year or there is a child born of the marriage. For each year a judge contributes to or makes a deposit in JSAS, the spouse is entitled to an annuity of 1.5% of the judge's "average annual salary," subject to a 25% minimum annuity and a 50% maximum annuity. The years during which a judge is receiving a JRS annuity (and contributing 3.5% of that compensation or 2.2% of total recall compensation to JSAS) are included as creditable service in computing the surviving spouse's annuity. The judge's "average annual salary" is based on the highest average salary and/or retirement annuity received during any three consecutive years. In other words:

- a surviving spouse is entitled to receive a JSAS annuity of no less than 25% of the average annual salary of the judge;
- for each year that a judge's contributions or deposits exceed the amount needed for the minimum 25% survivor annuity (i.e., creditable service exceeding 16 years and 8 months), a surviving spouse is entitled to an additional 1.5% of the judge's average annual salary; and
- the maximum annuity payable is 50% of the average annual salary of the judge—which would be achieved with 33 years and 4 months of creditable service.

Annuities for Surviving Children

Under JSAS, certain unmarried surviving children are also eligible to receive an annuity. Payments are continued until a child reaches 18 years of age, or 22 years of age if the child is a student who regularly pursues a full-time course of study. An unmarried child who is incapable of self-support because of a mental or physical

disability occurring before the child's 18th birthday (or later if the disability occurs when the child is receiving a JSAS annuity while a full-time student) is eligible for an annuity regardless of age. Where there is also a surviving spouse, the amount of the annuity is generally equal to 20% of the average annual salary of the judge divided by the number of eligible children, subject to a maximum annuity of 10% of the judge's average annual salary per child.

Payment of Annuities

JSAS annuitants receive the annuity payment due for each month on the first day of the following month. Under the Federal Financial Management Act of 1994, as amended, all federal wage, salary, retirement, and benefit payments must be made by electronic funds transfer to the recipient's account in a bank or other financial institution. Annuitants should complete Standard Form 1199A (one part of which requires information from the annuitant's financial institution) and submit it to the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division. The form is available from any financial institution.

Cost-of-Living Adjustments

JSAS annuitants receive an annual adjustment in their annuities at the same time, and by the same percentage, as any COLA received by Civil Service Retirement System annuitants (see discussion in Chapter 1 at page 5).

PRIOR CREDITABLE SERVICE

Obtaining Credit

Prior federal civilian service (including judicial service) and active military service (except military service for which credit has been allowed toward retirement or retired pay under any other provision of law) are eligible for credit under JSAS. A deposit equal to 3.5% of the salary received for prior civilian service (plus 3% interest for the years in question, compounded annually on December 31) is necessary to receive full credit under JSAS for the past service. See 28 U.S.C. § 376(d). No deposit is required to credit military service. The deposit may be made at any time before the judge's death, and it can be made in installments. But the initial payment must cover at least the last 18 months of prior civilian service and any later payments must be in the amount of \$25.00 or multiples of that amount. Procedures for making the deposit are set forth in volume III of the *Guide to Judiciary Policies and Procedures*.

If no deposit is made for prior creditable service, the annuity of the surviving spouse will either—

- include credit for such service, with the annuity reduced by 10% of the outstanding deposit computed as of the date of the judge's death, or

- not include credit for such service, but be spared the 10% reduction, whichever results in a greater annuity. In all cases, however, a surviving spouse is still entitled to the minimum annuity of 25% of the judge's average annual salary (assuming payroll contributions or deposits were made for the minimum 18-month period).

Considerations in Making Deposits

If a judge decides to make a deposit to receive credit under JSAS for prior creditable civilian service, the cost (as explained above) is 3.5% of the salary received for that service, plus 3% annual, compounded interest. When electing JSAS, a judge who has completed prior creditable service should consider making a deposit for at least the last 18 months of prior service to provide immediate protection for the judge's survivors. In making that decision, a judge should also consider, among other factors: (1) the cost of purchasing comparable term life insurance for 18 months in lieu of depositing 3.5% of salary for immediate JSAS coverage; and (2) the fact that a vested JSAS benefit would ensure continued coverage under the Federal Employees Health Benefits program for the survivors of a judge who has elected JRS.

Except for the 18 months of prior service credit needed to secure immediate vesting of JSAS benefits, it is not advantageous in most cases to deposit the 3.5% contributions for past service since a judge's spouse is entitled under JSAS to a 25% minimum survivor's annuity in all cases. It is particularly disadvantageous to make a deposit for prior years of service when the total number of creditable years of service is less than 16 years and 8 months, the point at which additional creditable service would begin to provide more than the minimum 25% annuity (*i.e.* $16\frac{2}{3}$ years \times $1\frac{1}{2}\%$ of average annual salary = 25% of the judge's average annual salary).

Likewise, if a judge has made contributions or deposits to the Judicial Survivors' Annuities Fund for service of 33 years and 4 months or more, no additional deposits for prior creditable service would be useful since the judge's surviving spouse would still only be entitled to the maximum 50% annuity (*i.e.* $33\frac{1}{3}$ years \times $1\frac{1}{2}\%$ of average annual salary = 50% of the judge's average annual salary).

The statute includes a special provision for judges who select the "hybrid" alternative annuity. The surviving spouse would be entitled to an annuity under JSAS, and may also be eligible for a survivor's annuity based on the CSRS or FERS portion of the "hybrid" annuity. However, only federal service creditable towards the JRS portion of a "hybrid" annuity is creditable towards a JSAS annuity.

SEPARATION FROM OFFICE BEFORE AGE 65

A judge who retires from office before age 65 and is eligible for a deferred JRS annuity may continue JSAS coverage by filing a written notification of the judge's intent to remain in the program with the Administrative Office (the Judges

Compensation and Benefits Branch of the Article III Judges Division) within 90 days before leaving office. For each year the JRS annuity is deferred, a judge must contribute a sum equal to 3.5% of the deferred annual annuity. JSAS coverage will be deemed to have been revoked unless a judge files the written notification on a timely basis.

If a judge does not elect to continue participation, the judge will receive a lump-sum payment of all contributions and deposits (plus 3% annual, compounded interest) minus 2.2% of the judge's salary for each year that contributions or deposits were made. See 28 U.S.C. § 376(g). In effect, this means that the judge will receive *interest* on contributions and deposits, but will receive a refund of the contributions and deposits *themselves* only to the extent that they were made at a rate higher than 2.2%.

TERMINATION OF ANNUITY

An annuity payable to a surviving spouse terminates upon (1) the spouse's death, or (2) the spouse's remarriage before the age of 55. An annuity payable to a surviving child ordinarily terminates:

- on the last day of the month in which an unmarried child turns 18, if he or she is not a full-time student;
- on July 1 of the year following an unmarried child's 22nd birthday, if he or she remains a full-time student until that time;
- on the last day of the month in which an unmarried child, between the ages 18 and 22, ceases to be a full-time student; or
- on the last day of the month in which a child dies or marries.

The annuity payable to a child who remains incapable of self-support due to a mental or physical disability incurred before age 18 or while receiving the annuity continues without interruption during the child's lifetime regardless of age.

If a judge dies without any survivors eligible to receive an annuity, the judge's contributions to the Judicial Survivors' Annuities Fund (plus 3% annual, compounded interest) will be refunded to beneficiaries in accordance with the order of precedence set forth in 28 U.S.C. § 376(o), beginning with any beneficiary or beneficiaries designated by the judge on Form PER 42.

FURTHER INFORMATION

More information on JSAS is available from the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division at (202) 502-1880.

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SOCIAL SECURITY

All judicial service after December 31, 1983, is creditable for Social Security purposes. See 42 U.S.C. § 410(a)(5)(E).

CONTRIBUTIONS

All “wages” of a judge, regardless of age, are subject to the Social Security Federal Insurance Contributions Act (FICA) tax, which includes a tax for Old Age, Survivors, and Disability Insurance (OASDI) and a tax for Medicare Part A hospital insurance (see Chapter 11). See 26 U.S.C. § 3121(b)(5)(E). The OASDI tax rate is currently 6.2% of a wage base (\$76,200 in 2000) that is indexed annually for inflation. The Medicare tax is currently an additional 1.45% of *all* wages.

A judge’s retirement annuity payments are not subject to either the 6.2% OASDI tax or the 1.45% Medicare tax.

ELIGIBILITY FOR SOCIAL SECURITY RETIREMENT BENEFITS

Retirement benefits under Social Security’s OASDI program are based on the number of years of coverage and the wages earned by an individual over a lifetime. In most cases, to have a vested retirement benefit, an individual must have accumulated a total of 40 quarters (10 years) in which he or she earned a minimum amount of wages subject to FICA taxes. An unreduced retirement benefit is payable at a minimum age (currently age 65 but rising gradually to age 67 from 2003 to 2027), but a reduced benefit may be payable as early as age 62. The annual benefits range, in 2000, from roughly \$12,288 (for an individual) to \$34,392 (for a married couple, depending upon the age of the spouse). Benefits are indexed to account for inflation.

A full-time judge who remains in office before age 65 is not considered “retired” under the “earnings test” (see discussion on page 32) and thus, as a practical matter,

cannot receive a Social Security retirement benefit. But the retirement benefit ultimately payable to a judge who remains in office after the minimum age for an unreduced benefit (65 to 67) will be increased by a set percentage for each month of continued service before age 70 in which the judge delays receiving that benefit. The yearly increase will range from 6% in 2000 and 2001, to 6.5% in 2002 and 2003, 7% in 2004 and 2005, 7.5% in 2006 and 2007, and 8% in 2008 and beyond. Any months in office occurring at or beyond age 70 will not count toward the retirement benefit but the salary received for that service will be included in the earnings used in calculating the benefit. Usually, the retirement benefit is based on the judge's highest earnings over a 35-year period.

WINDFALL ELIMINATION PENALTY

The "windfall elimination" penalty generally requires reduction of the Social Security retirement benefit otherwise payable to a retiree who is eligible to receive a pension for work not covered by Social Security (*i.e.*, work not subject to FICA taxes). But the Social Security benefits of judges are not subject to reduction based on judicial service occurring before judges became covered under Social Security in 1984.

EARNINGS TEST

As amended in April 2000, the Social Security Act provides for reduction of an individual's Social Security retirement benefits in accordance with a set formula (known as the "earnings test") when he or she is under the "full retirement age" (*i.e.*, the age at which the individual would have become eligible for an unreduced retirement benefit—see discussion on page 31) and earns wages over a specified "exempt" amount during a taxable year (typically the calendar year). (*A judge's retirement annuity is not considered "wages" for purposes of the earnings test.*) The amount of earnings exempt from the reduction is—

- \$10,080 (in 2000, subject to annual adjustment) for a year in which the individual will not yet attain the full retirement age, and
- \$17,000 (in 2000, subject to annual adjustment) for the months preceding attainment of the full retirement age within the year in which the individual will attain that age.

The amount of reduction is (1) \$1.00 in Social Security retirement benefits for every \$2.00 in wages above the exempt amount during a year preceding the one in which the full retirement age is attained, and (2) \$1.00 in benefits for every \$3.00 in wages above the exempt amount during the months preceding attainment of the full retirement age within the year in which that age is attained. There is no reduction of Social Security retirement benefits based on wages earned during or after the month in which the full retirement age is attained.

DISABILITY BENEFITS

The OASDI program also provides a disability benefit—roughly comparable in amount to the benefit it provides at retirement—for individuals under age 65 who cannot engage in any substantial work for at least a year because of a medically determinable physical or mental impairment. To qualify for disability coverage, a judge must have a minimum amount of wages subject to FICA taxes for the quarter in which his or her disability is determined, and for at least 20 quarters (five years) of the preceding 40 quarters (ten years). Generally, he or she must also satisfy a five-month waiting period before benefits become payable.

This disability benefit, when combined with any workers compensation or disability benefit provided under any other federal, state, or local law or plan, cannot exceed 80% of the individual's "average current earnings" before the onset of disability.

SPOUSAL BENEFIT

If a judge's spouse does not qualify for Social Security retirement benefits on his or her own, the spouse is eligible to receive 50% of the judge's benefit at age 65, or a reduced benefit as early as age 62. The amount of the reduced benefit will range between 37.5% and 45.83% of the judge's benefit, depending upon the age of the spouse at the time he or she begins receiving the retirement benefits.

Survivors' Benefits

After a judge's death, a modest lump-sum payment and a monthly survivor benefit equal to the judge's Social Security retirement benefit are payable to an eligible surviving spouse and dependents. If the judge's spouse qualifies for such retirement benefits based on his or her own employment, and those benefits are greater than the benefit that the judge was receiving, then the spouse will not qualify for a survivor's benefit.

RECALL

Additional information regarding the impact of Social Security on retired judges who are recalled to active service is set forth in Chapter 15.

FURTHER INFORMATION

Certain Social Security information, including forms and pamphlets, may be obtained from the Social Security Administration 24 hours a day by calling toll-free (800) 772-1213, or by accessing the agency's Internet website (<http://www.ssa.gov>). Information may also be obtained from the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, at (202) 502-1880.

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THRIFT SAVINGS PLAN

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for federal civilian employees. It offers the same type of savings and tax benefits many private corporations offer their employees through 401(k) plans.

ELIGIBILITY TO PARTICIPATE

Active Judges and Judges Recalled to Service

Judges, including judges retired under CSRS and FERS who are recalled to service, may participate in the Thrift Savings Plan, which consists of five funds:

- Government Securities Investment Fund (or “G Fund”);
- Fixed Income Investment Fund (or “F Fund”);
- Common Stock Index Investment Fund (or “C Fund”);
- Small Capitalization Stock Index Fund (or “S Fund”); and
- International Stock Index Fund (or “I Fund”).

The S and I Funds are available for investment beginning in October 2000.

Judges Who Retire or Resign from Office

Only an active judge or recalled judge who retired under CSRS or FERS may participate in the Thrift Savings Plan. A recalled judge who retired under JRS, including the “hybrid” alternative, may not participate in the TSP. A judge who retires or resigns from office is no longer eligible to participate in the TSP, and any deductions from salary cease upon separation from office.

CONTRIBUTIONS

Judges covered under FERS may contribute up to 10% of their salary to TSP before taxes, subject to Internal Revenue Service rules that limit the amount of contributions

that may be made annually to such tax-deferred retirement plans. For 2000, the limit is \$10,500. The government automatically contributes 1% of salary and then matches the judge's first 3% of salary contributions on a dollar for dollar basis. Thereafter, the government matches the next 2% of salary contributions on a 50 cents per dollar basis.

Judges covered under CSRS or JRS may contribute up to 5% of salary before taxes, subject to the IRS contribution limit. No matching government contribution is made to a judge's TSP account. Due to the 5% ceiling on a judge's TSP contributions, at present the IRS contribution limit is not of practical concern to judges covered under CSRS or JRS. Based upon 2000 salary levels, the maximum contribution is \$6,499.80 (5% of \$129,996).

The judge's contributions may be deposited in any combination of the various TSP funds. See *generally* 5 U.S.C. § 8440a. TSP earnings are tax-deferred.

OPEN SEASONS

Two "open seasons" (beginning with fiscal year 2001: April 15 through June 30 and October 15 through December 31) are offered annually to all federal employees, giving them the option to start participation and change the amount of their contributions. Money already deposited in a TSP account and, beginning in October 2000, future contributions may be reallocated among the funds at any time. Participation in the TSP may also be stopped at any time.

The TSP contributions of retired judges who are recalled with a break in service of less than 31 calendar days resume upon recall. If the break in service is 31 or more calendar days, the judge may not enroll in the TSP until the first open season after beginning to serve on a recalled basis.

TSP LOANS

A judge may borrow from the TSP account up to an amount equaling the judge's contributions and the earnings on those contributions. Two types of loans are available: general purpose and residential. General purpose loans may be obtained for any purpose. The repayment period for a general purpose loan is from one to four years, and no documentation is required. Residential loans can be obtained for the purchase of a primary residence. The repayment period for a residential loan is from one to fifteen years, and documentation to support the amount of the loan request (*e.g.*, a real estate contract) is required.

WITHDRAWAL OF TSP FUNDS

Withdrawal of funds from the TSP Fund is authorized under specified contingencies and under the rules applicable to other retirement plans governed by section 401 of the Internal Revenue Code.

Judges in Active Service

Effective October 1, 1997, a judge or other TSP participant in active federal service is permitted to: (1) withdraw an amount not exceeding the participant's total contributions and earnings on those contributions to meet a documented financial hardship (but the early withdrawal penalty tax applies—see discussion of “early distributions” on page 37); or (2) if the participant is age 59½ or older, make a one-time withdrawal of all or part of the participant's vested account balance. See 5 U.S.C. § 8433(h).

Judges who Retire or Resign from Office

On or after separating from office, a judge may elect to have the balance of his or her TSP account paid as:

- an annuity for self, or self and spouse, or self and someone other than a spouse, or
- a single, or lump-sum, payment, or
- a series of monthly payments, and/or
- an amount to be transferred to another eligible retirement plan.

Judges Recalled to Service

A judge who retires under CSRS or FERS and is recalled to service 31 or more calendar days after retiring may elect to withdraw the balance of his or her TSP account in the same manner as any other judge retiring or resigning from office. The request for withdrawal must be submitted after the judge retires, but before the judge begins to serve on a recalled basis. A judge recalled to service less than 31 calendar days after retiring is not eligible to withdraw the balance of his or her TSP account during the recall. The judge is treated like an active judge with respect to TSP account withdrawals.

A judge who retires under JRS, including the “hybrid” alternative, and is recalled to service continues to be treated in the same manner as judges who retire or resign from office (see above) for TSP withdrawal purposes.

FINAL DISPOSITION OF TSP ACCOUNT BALANCE

Although a judge need not make a withdrawal election immediately upon separating from office, an election should be made, and withdrawals from the TSP account should begin, by April 1 of the year following the later of the year in which the judge either becomes 70½ or retires. If no election is made so that payments begin by that deadline, the judge's TSP account will be paid as an annuity or, if the account balance is at or below an amount prescribed by the Executive Director of the TSP Board (currently \$3,500), in a lump sum. See 5 U.S.C. §§ 8433(f)(2), 8440a(b)(7), 8440b(b)(8), and 8440c(b)(8).

SPECIAL CONSIDERATIONS

Generally speaking, participant contributions to TSP and the earnings on TSP account balances are subject to income tax only upon withdrawal. Judges considering TSP participation should consult their financial advisors with respect to the need for a tax-deferred savings plan and their possible exposure to distribution penalties and other tax consequences for TSP withdrawals. The following are some of the special tax considerations to keep in mind:

Early Distributions

The Internal Revenue Code imposes a 10% “early distribution” tax on the gross amount of certain distributions made to a participant who has not yet attained the age of 59½ and who has left active service before the year in which the judge turned 55. The tax applies if the distribution is a single payment, an automatic cashout, or a series of equal monthly payments not based on the IRS life expectancy table. It is not applicable to annuity payments, monthly payments based on the life expectancy table, payments made because of death, court order, or disability retirement, or payments directly transferred, or rolled over by the participant, to an IRA or other eligible retirement plan.

Excess Distributions

The Internal Revenue Code previously had imposed a 15% excise tax on “excess distributions”—defined as aggregate distributions exceeding \$160,000 (adjusted annually for inflation)—from all tax qualified plans, tax-sheltered annuities, IRAs, and TSP accounts. The federal estate tax on the estate of a participant was also increased by 15% of the undistributed excess retirement accumulation at time of death. Those taxes, however, were repealed in August 1997 with regard to any distributions or deaths occurring after December 31, 1996.

Minimum Distribution

The Internal Revenue Code imposes a “minimum distribution” penalty on amounts in a tax qualified plan, tax-sheltered annuity, IRA, or TSP account that are not distributed as required by the Code. This takes the form of a 50% excise tax on the undistributed portion of the minimum required distribution. The minimum distribution is measured by the participant’s life expectancy and must begin by April 1 of the year following the calendar year in which the participant reaches age 70½ or retires (whichever is later).

Mandatory Withholding

Any lump-sum payment from a TSP account is subject to mandatory tax withholding if not transferred directly from the account to an IRA or other eligible retirement plan. If the payment is made to the participant but rolled over to an IRA or other eligible plan within 60 days, tax will be withheld but may be refunded.

FURTHER INFORMATION

More information about participation in the TSP is available from the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division at (202) 502-1880. TSP information, including account balances, can also be obtained from the Thrift Savings Plan's ThriftLine, (504) 255-8777, or at its Internet website, <http://www.tsp.gov>.

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MILITARY

RETIREES

A judge who has served as an officer or enlisted person in a regular or reserve component of the armed forces of the United States is entitled to receive, while in judicial service, any military retired or retainer pay (“military annuity”) to which he or she is entitled and, upon separation from judicial office, also to receive any civilian federal retirement annuity for which he or she is eligible.

CIVILIAN RETIREMENT CREDIT FOR MILITARY SERVICE

As a general rule, service in the armed forces of the United States is creditable for retirement purposes under CSRS or FERS. If a judge who is receiving, or will receive, a military annuity intends for his or her military service to be used in computing a CSRS or FERS annuity (or the CSRS or FERS portion of a “hybrid” alternative annuity), he or she generally must waive any future right to the military annuity before credit can be received for the military service under CSRS or FERS. The waiver can be made either before or after the judge retires from the bench. It is not necessary to waive the military annuity to receive credit for military service under CSRS or FERS if:

- the military annuity was awarded on account of a service-connected disability either incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in the line of duty during a period of war;
- the military annuity was awarded under the provisions of 10 U.S.C. §§ 12731 - 12740, which govern military retired pay based on reserve and other non-regular service in the armed forces; or
- the military service in question was not used in the computation of a military annuity (e.g., military service in excess of 30 years).

A military service deposit is necessary for a judge to receive credit under FERS for all military service performed after December 31, 1956. This deposit must be made before the judge separates from FERS-covered federal civilian service. Likewise, a judge who is eligible for Social Security benefits at the time of retirement can receive full credit for post-1956 military service in his or her CSRS annuity and Social Security benefit calculation only if a deposit covering that military service is made before separation from federal civilian service. Although a judge who is *not* eligible for Social Security benefits at the time of retirement can receive full credit under CSRS for post-1956 military service without making a deposit for that service, the CSRS annuity will be recalculated to eliminate credit for the post-1956 military service if the judge becomes eligible to receive Social Security benefits at age 62.

More detailed information on credit for military service under CSRS or FERS is available by contacting the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, at (202) 502-1880.

FORMER DUAL COMPENSATION ACT RESTRICTIONS

Before October 1999, the military annuity payable to an individual who had retired as an officer or enlisted person from a regular component of the armed forces was subject to reduction, under the Dual Compensation Act, during any period in which he or she received pay for service in a civilian federal position. See 5 U.S.C. § 5532(b), (c) (1994). The military annuity of a judge who had retired as an officer of a regular component of the armed forces was generally reduced to a set amount, indexed annually for inflation, plus one-half the remainder of the judge's military annuity. For the final calendar year (1999) that the reduction was in effect, the set amount was \$10,450 for judges who first entered military service before August 1, 1986, and \$9,298 for judges who first entered military service on or after that date.

The Dual Compensation Act imposed an additional limitation on officers and enlisted members of a regular or reserve component of the armed forces who first received a military annuity after January 11, 1979. See 5 U.S.C. § 5532(c) (1994). To the extent that an individual's military annuity plus federal civilian salary exceeded the base pay for Level V of the Executive Schedule (\$110,700 in 1999), his or her military annuity was reduced so that the combined income did not exceed that amount. Because the salary of a judge compensated at \$125,764 (the salary of a bankruptcy judge or full-time magistrate judge in 1999) exceeded Level V, the judge's military annuity was reduced to zero during his or her judicial service. These restrictions applied to all judges in active service and to retired judges recalled to judicial service to the extent that they earned additional "wages" for the recall service.

Section 651 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. No. 106-65) repealed section 5532 of title 5, United States Code, effective October 1, 1999. As a result, the restrictions of the Dual Compensation Act on receipt of military annuities no longer apply to bankruptcy judges and magistrate judges.

MILITARY SURVIVOR BENEFITS

The Survivor Benefit Plan (SBP) is the income maintenance system created for surviving dependents of deceased members of the armed services. If an individual elects to participate in SBP, the cost of coverage normally is withheld from the individual's military salary or annuity.

Except for a one-year period commencing two years after an individual begins receiving a military annuity, an election to participate in SBP is generally irrevocable. Thus, in most instances, payments for SBP coverage must be made until the individual dies or no longer has a qualified beneficiary. A statutory exception allows revocation of SBP coverage by individuals who have waived their military annuity in order to participate in CSRS. 10 U.S.C. § 1450(d).

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INCOME TAXES

Annuities received by judges and their families under CSRS, FERS, JRS, and JSAS are taxable in part. For federal income tax purposes, an annuity has two components:

- the tax-free portion of the annuity that represents the return of contributions made by the judge to the retirement fund over the years (and on which income taxes were already paid); and
- the taxable balance, representing interest and government contributions (see 26 U.S.C. § 72(b)).

The tax-free portion of the annuity is calculated under one of two methods—a “General Rule” or a “Simplified Method.” For further details on these methods and other information on how annuities and pensions are taxed, judges should obtain Publications 525, 575, 721, and 939, prepared by the Internal Revenue Service (IRS).

Lump-sum payments received from the Civil Service Retirement and Disability Fund (CSRS or FERS), the Judicial Officers’ Retirement Fund, or the Judicial Survivors’ Annuities Fund are treated like annuities for federal income tax purposes (see discussion above). In addition, these payments may be subject to an additional tax of 10% as early distributions from the retirement plans because they are not paid periodically over the judge’s expected lifetime. 26 U.S.C. § 72(t). This additional tax does not apply, however, to payments made:

- after a judge has attained age 59½;
- to beneficiaries after the judge’s death; or
- to a judge who “separates from service” after age 55.

Tax considerations applicable to the TSP and the Federal Judiciary Flexible Benefit program are discussed in Chapters 6 and 12, respectively.

STATE INCOME TAXES

4 U.S.C. § 111 authorizes the states to tax the income of federal employees as long as the taxation does not discriminate against the employees because of the compensation's source. The Supreme Court has ruled that the statute prevents a state from taxing the retirement benefits of federal civilian or military retirees, unless they similarly tax those of state and local government retirees. *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989).

The states vary substantially, however, in how they tax retirement income:

- Some states have no income tax.
- Some states fully tax retirement income.
- Some states exempt all retirement income from income tax, or exempt income received from qualified section 401(k) plans.
- Some states partially exempt retirement income, or at least federal pensions, from income tax.

RECALL SERVICE

Any “wages” that a retired judge receives for service on recall (see Chapter 15) are fully taxable for both federal and state income tax purposes.

FURTHER INFORMATION

The foregoing information is intended only to highlight some of the tax implications of judicial retirement. Judges should consult with their own legal or financial advisors before making any decisions that may affect tax liability. Relevant information can also be obtained directly from the IRS and other tax authorities. Many tax-related publications and forms are available electronically on the Internet at the IRS website (<http://www.irs.ustreas.gov>) and at websites maintained by state and local governments.

PART TWO

Other Benefits

9

FEDERAL

EMPLOYEES' GROUP

LIFE INSURANCE

Judges are eligible to participate in the Federal Employees' Group Life Insurance (FEGLI) program. See 5 U.S.C. § 8701(a)(1). FEGLI is a term life insurance program for federal employees administered by the Metropolitan Life Insurance Company under contract to the U.S. Office of Personnel Management (OPM).

COVERAGE

Unless coverage is waived, a judge is automatically covered by Basic Life insurance (and subject to withholding of the applicable premium from his or her salary) upon the date of his or her entrance on duty. To waive Basic Life insurance coverage, a judge must execute and file Form SF 2817, Life Insurance Election, with the clerk of court, or with the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, within the calendar month in which he or she enters on duty. A judge may also cancel existing FEGLI coverage at any time by filing an SF 2817 form.

FEGLI consists of Basic Life coverage and three optional coverages (Options A, B, and C). *Option B, in particular, provides a judge with the opportunity to elect a substantial amount of term life insurance coverage.* Basic Life insurance coverage is a prerequisite to the purchase of any of the three options, and cancellation of Basic Life coverage also cancels any optional coverages at the same time. A judge can elect optional coverages by executing and filing an SF 2817 form with either the clerk of court or the Judges Compensation and Benefits Branch of the Article III Judges Division within 31 days after he or she enters on duty. As explained on page 48, a judge who does not elect optional coverage at that time generally must show evidence of insurability before optional coverage may be obtained.

OPTIONS

Basic Life insurance coverage is based on a “basic insurance amount” that generally equals the insured’s annual salary (rounded up to the next \$1,000, plus an additional \$2,000), subject to a minimum amount of \$10,000. For persons under age 45, there is an extra benefit that increases the amount of coverage up to twice the basic insurance amount. Basic Life coverage also includes accidental death and dismemberment benefits, paying (in addition to the life insurance benefit itself) either 50% or 100% of the life insurance amount, depending on the circumstances, and a “Living Benefits” option that allows certain terminally ill persons to receive during their lifetime a lump-sum distribution of all or (in the case of insured employees, not annuitants) part of their Basic Life insurance benefit.

Option A (Standard) provides additional coverage of \$10,000. Option A coverage also provides additional coverage for accidental death or dismemberment equal to all or half the additional life insurance amount, depending on the circumstances.

Option B (Additional) permits purchase of up to five times the annual rate of an insured’s basic salary, rounded to the next \$1,000. **Option C (Family)** permits purchase of coverage for family members: \$5,000 (for a spouse), \$2,500 (for each dependent child, including a stepchild or foster child), or in multiples of 2, 3, 4, or 5 times these amounts. No additional coverage for accidental death and dismemberment is included under either Option B or Option C.

COMMON FEATURES

Basic Life and the three options have several common features. Generally, the level of benefits is fixed, premiums are established (and occasionally revised) by OPM and collected through payroll deductions (including withholding from retirement compensation), optional insurance premiums increase with age until age 60 (and until age 70 for Option C, effective April 24, 2000, and for Option B, effective no earlier than April 24, 2001), coverage is renewed automatically on an annual basis, no cash value accrues, and no dividends are paid. In short, the coverage is the same as a term-life insurance policy. The amount of coverage is linked to a scheduled rate of pay, and it automatically reflects any changes in pay. FEGLI coverages may be reduced or canceled at any time. They may be increased, however, only under limited conditions, which generally require evidence of insurability (including a physical examination).

MODIFYING INSURANCE COVERAGE

If a judge previously has waived Basic Life insurance coverage, declined to elect Option A or B coverage, or elected less than the maximum amount, the

judge may request such insurance coverage or additional coverage if—

- evidence of insurability is furnished, and
- one year has elapsed since the judge filed the waiver to obtain such coverage.

After it has been declined, a judge may elect or increase Option B coverage without waiting a year or furnishing evidence of insurability, or may elect or increase Option C coverage, if there is a change in marital status or upon the birth or adoption of a child. Basic Life and optional coverages may also be elected or increased without submitting evidence of insurability if a special open season is provided by law. For example, Congress required OPM to conduct an eight-week “open enrollment opportunity” in the spring of 1999.

To show evidence of insurability, Form SF 2822 (Request for Insurance, Federal Employees’ Group Life Insurance Program) should be requested from the Judges Compensation and Benefits Branch, Article III Judges Division in the Administrative Office. This form is a combination request to cancel a waiver, medical certificate, and authorization to insure an employee. Part A is completed by the Judges Compensation and Benefits Branch. Part B is completed by the judge and signed in the presence of his or her physician, and Part C is completed by the judge’s examining physician. The completed form must then be sent directly by the judge’s physician to the Office of Federal Employees’ Group Life Insurance, 200 Park Avenue, New York, New York 10166-0188. That office (which can be reached at (800) 633-4542) will notify the Judges Compensation and Benefits Branch as to whether insurance coverage is authorized or denied, and the Branch will, in turn, immediately notify the judge of the determination.

SEPARATION FROM OFFICE BEFORE RETIREMENT

If a judge leaves office before becoming entitled to receive an immediate annuity under JRS, CSRS or FERS, the judge’s FEGLI group life insurance coverage terminates. But coverage continues (other than accidental death and dismemberment benefits) for 31 days after the judge leaves office. During that 31-day period, the judge may apply for an individual policy from an insurance company that has agreed to issue such policies under the FEGLI program.

If a judge is entitled to receive a deferred annuity upon reaching age 62 or 65, FEGLI coverage is not reinstated when the deferred annuity is received.

In October 1998, Congress authorized an experiment with making Option B coverage “portable” for employees who resign. Beginning April 24, 1999, a judge who leaves office before becoming entitled to receive an immediate annuity is permitted to continue all or a portion of Option B group coverage that has been in effect for the preceding five years (or the entire period of service, if fewer than five years) provided that he or she pays the full cost of the continued coverage. Unless Congress extends

this provision or makes it permanent, elections of that kind will be permitted and coverage based on those elections will continue for no longer than three years after the program commenced (*i.e.*, until April 24, 2002).

COVERAGE UPON RETIREMENT

Enrollment in the group life insurance program may be continued (other than accidental death and dismemberment benefits) when a judge retires from office only if the judge:

- is entitled to receive an immediate annuity under CSRS, FERS, JRS, or the “hybrid” alternative annuity at the time of leaving office, and
- was covered by the life insurance program for either the last 5 years of service, or the full period of service during which the insurance was available, if less than 5 years.

A judge may choose one of three levels of Basic Life coverage upon retirement: 100% (no reduction), 50% (50% reduction), or 25% (75% reduction) of the basic insurance amount. If a judge elects the 50% or 25% level, his or her basic insurance amount is reduced by 1% or 2% per month, respectively, until the level of coverage elected is reached. The cost of Basic Life depends on the coverage level selected and the age of the judge at retirement (*i.e.*, whether the judge retires before age 65). Coverage at the 25% level is provided without cost to the judge. A judge electing 100% or 50% coverage may cancel that election at any time if the insurance has not been assigned, and thereafter receive 25% coverage.

If a judge retires before age 65, he or she may elect to continue existing Option A coverage, with the full cost withheld from the judge’s annuity. Beginning the second month after attaining age 65 or retiring, whichever is later, coverage continues without cost but is reduced by 2% per month until reaching 25% of face value (\$2,500).

Upon retirement, a judge will be asked to elect the number of multiples of existing Option B or Option C coverage that he or she wishes to continue into retirement. Any multiple that the judge elects not to continue will be considered canceled. (If the judge does not make an election, all existing multiples will be automatically continued.)

At age 65 or upon retiring, whichever is later, the judge will also be asked to elect either full or reduced Option B and Option C coverage. If the judge elects reduced coverage (full reduction), beginning the second month after attaining age 65 or retiring, whichever is later, coverage continues without cost but is reduced by 2% per month for 50 months, at which point coverage terminates. If the judge elects to maintain coverage at full value (no reduction), he or she will continue to pay premiums. A judge may change from full coverage to reduced coverage at any time if the

insurance has not been assigned, and thereafter receive coverage as if he or she had initially chosen the 2% per month reduction. But, a judge may not change from reduced coverage to full coverage after the 2% reduction begins.

COVERAGE UPON RECALL

A recalled judge is considered a reemployed annuitant for life insurance purposes. Thus, a retired magistrate judge or bankruptcy judge may be entitled to acquire federal life insurance coverage as an employee during the period of recall service. Life insurance benefits for recalled judges are described in Chapter 15.

DESIGNATION OF BENEFICIARY

A designation of beneficiary under the FEGLI program is solely for the disposition of FEGLI insurance proceeds. If, at the death of the judge, no beneficiary has been designated to receive all or any part of the insurance proceeds, that amount is payable to the individuals listed below in the following order of precedence:

- to the surviving spouse;
- if a spouse does not survive, to the surviving child or children, with the share of any deceased child distributed among the descendants of that child;
- if none of the above, to the parents in equal shares or the entire amount to the surviving parent;
- if none of the above, to the duly appointed executor or administrator of the estate;
- if none of the above, to the other next of kin who are entitled under the laws of the domicile of the insured at the date of death.

If a judge is not satisfied with the statutory order of precedence, he or she may change the designation at any time by completing a Form SF 2823, Designation of Beneficiary, and returning it to the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, Washington, D.C. 20544. A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted. The insurance proceeds will not be distributed according to the judge's designation or the statutory order of precedence if a divorce, annulment, or separation decree or court-approved marital property settlement expressly provides for distribution to someone else.

ABSOLUTE ASSIGNMENT OF LIFE INSURANCE

A judge may make "an irrevocable assignment of [the judge's] incidents of ownership" in a FEGLI life insurance policy. See 5 U.S.C. § 8706(e). An assignment is made under regulations issued by the Office of Personnel Management, published in part 870, subpart I of title 5 of the Code of Federal Regulations. A judge may be required to make an irrevocable assignment of his or her FEGLI coverage (if one has

not already been made) to a person specified in a divorce, annulment, or separation decree or court-approved marital property settlement.

An assignment must be executed and witnessed on an approved form expressing the judge's intent to assign irrevocably all incidents of ownership in the insurance. In assigning FEGLI insurance, a judge must assign *all* Basic Life as well as any Option A or Option B coverage that he or she owns, but a judge may not assign Option C-Family Insurance coverage. The assignment may be made to one or more "persons," including individuals, corporations, or trusts. An assignment to two or more persons must be made by specifying the percentage shares to go to each assignee, rather than the dollar amount or type of insurance. Contingent assignees (selected in the event the primary assignee predeceases the insured) may not be named.

The most significant incident of FEGLI insurance ownership assigned is the right to name beneficiaries. Once assigned, that right vests exclusively in the assignee(s). An assignment, therefore, cancels a judge's prior designation of beneficiary. Assignees should file a designation of beneficiary, may name themselves or any other person as beneficiary, and may later change the designation at their discretion. If an assignee predeceases the judge and has not designated a beneficiary, the proceeds of the life insurance policy will be paid to the assignee's estate upon the judge's death. See 5 C.F.R. § 870.909(c).

More information about this topic and an assignment package, including Form RI 76-10 (Assignment of Federal Employees' Group Life Insurance), can be obtained by contacting the Administrative Offices' Article III Judges Division, Judges Compensation and Benefits Branch.

FURTHER INFORMATION

OPM is responsible for the administration of the FEGLI program and for interpreting the pertinent statutes and regulations. Information on FEGLI is available from OPM on its Internet website (<http://www.opm.gov>).

Although OPM retains ultimate administrative authority, questions concerning the FEGLI program and benefits may be addressed initially to the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division at (202) 502-1880.

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FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

All judges are eligible to participate in the Federal Employees Health Benefits (FEHB) program. See 5 U.S.C. § 8901 *et seq.* FEHB provides federal employees a wide selection of health benefits plans, including managed fee-for-service plans, plans offering a point-of-service product, and health maintenance organizations, as well as optional levels of coverage within certain plans. The key features of the FEHB program are:

- no waiting period for coverage;
- no physical examination required for coverage, and no denial of coverage on grounds of age or physical condition;
- choice of plans and options;
- choice of self, or self and family, coverage;
- government contribution toward the total cost of premium;
- payroll deduction of employee's share of premium;
- annual opportunities to enroll or change plan, type of coverage, or option;
- continued group coverage for retirees, former spouses, and survivors; and
- temporary continuation of group coverage and right to convert to private (non-group) coverage when FEHB coverage ends.

ELECTION OF COVERAGE

The clerk of court makes the following available to each judge:

- SF 2809, Health Benefits Registration Form; and
- brochures for all available plans.

A completed SF 2809 must be returned to the clerk of court, or to the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, within 60 days after entrance on duty. A judge may change coverage under the FEHB

during (1) the open season held annually in the fall, or (2) the period beginning 31 days before, and ending 60 days after, a change in family status. In addition, a judge who previously waived FEHB health insurance may elect coverage during the annual open season without showing evidence of insurability.

CONTINUATION OF HEALTH INSURANCE AFTER RETIREMENT

Enrollment in a federal health benefits plan may be continued when a judge retires from office only if the judge:

- is entitled to receive an immediate annuity under CSRS, FERS, JRS or the “hybrid” alternative at the time of leaving office; and
- was covered by the health insurance program for either the last 5 years of service or the full period of service during which the insurance was available, if less than 5 years.

Consequently, a judge who leaves office with entitlement to a deferred annuity is not eligible to continue enrollment in a federal health benefits plan. If a judge elects to receive a “hybrid” alternative annuity, however, and leaves office while entitled to receive an immediate annuity under CSRS or FERS, enrollment in an FEHB plan may continue.

If a judge is not eligible for continued FEHB enrollment upon separation from office, the judge will automatically receive a 31-day extension of coverage beyond the last day of the pay period in which he or she leaves office. The judge may obtain a temporary continuation of coverage for up to 18 months after separation, but must pay the full premium (*i.e.*, both the government and employee share of the premium) plus a 2% administrative charge. The judge may also, either upon separation from office or expiration of a temporary continuation of coverage, convert his or her plan to an individual contract with the health benefits carrier without providing evidence of good health.

HEALTH INSURANCE FOR A JUDGE’S SPOUSE AND DEPENDENT CHILDREN

If enrolled in an FEHB plan, a judge may elect coverage for self or for self and family. Upon death, however, only spouses or other surviving family members who are entitled to receive an immediate survivor’s annuity under either JSAS, CSRS or FERS (including the CSRS or FERS portion of a JRS “hybrid” alternative annuity) are eligible to continue to be enrolled in the FEHB program. *Thus, if a judge elects to receive a straight JRS annuity and decides not to elect JSAS coverage, his or her spouse or other survivor is not eligible to continue enrollment in the FEHB program upon the judge’s death.* The survivor would, however, have a 31 day temporary extension of coverage at no cost, during which time he or she may convert to non-group coverage.

FURTHER INFORMATION

OPM is responsible for the administration of the FEHB program and for interpreting the pertinent statutes and regulations. Information on FEHB is available from OPM on its Internet website (<http://www.opm.gov>).

Although OPM retains ultimate administrative authority, questions concerning the FEHB program and benefits may be addressed initially to the Administrative Office's Article III Judges Division, Judges Compensation and Benefits Branch, at (202) 502-1880.

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MEDICARE

Medicare is a federal health insurance program for people age 65 or older, certain people with disabilities under age 65, and people of any age who have permanent kidney failure.

Medicare is administered by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services. Social Security offices located throughout the country (there are about 1,300) take applications for Medicare and provide general information about the program.

CONTRIBUTIONS

Medicare is part of Social Security, and the entire package of Social Security benefits is funded through FICA taxes. See 26 U.S.C. §§ 3101-3127. The Medicare tax is currently 1.45% of *all* wages. For 2000, a bankruptcy judge or magistrate judge will contribute \$1,884.94 to Medicare.

SERVICES

Medicare consists of two components: Part A (hospital insurance) and Part B (supplementary medical insurance). Part A hospital insurance can help pay for medically necessary inpatient hospital care, inpatient care in a skilled nursing facility, home health care, and hospice care. Covered services include semiprivate rooms, all meals, regular nursing services, operating and recovery room costs, hospital costs for anesthesia services, intensive care and coronary care, drugs, lab tests, X-rays, medical supplies and appliances, rehabilitation services, and preparatory services related to kidney transplant surgery.

Part B medical insurance covers doctors' services no matter where they are received (*e.g.*, at home, in the doctor's office, in a clinic, in a nursing home, or in a

hospital). Some outpatient medical services and items are not covered by Part B, such as routine physicals, most dental care, dentures, routine foot care, hearing aids and most prescription drugs. Eyeglasses are only covered if a beneficiary needs corrective lenses after a cataract operation.

Medicare does not generally cover delivery of hospitalization or medical services outside the United States and its territories.

ELIGIBILITY

A judge qualifies for Medicare at age 65 with 40 quarters (10 years) of judicial or other Medicare-covered service. A judge with the requisite amount of service is eligible to receive Medicare beginning at age 65, regardless of whether he or she continues in office, retires, or resigns. Similarly, a spouse qualifies when he or she has reached age 65. People of any age with permanent kidney failure and certain other disabilities may also qualify.

APPLYING FOR MEDICARE BENEFITS

Unless a judge is *already* receiving Social Security retirement or disability benefits three months before attaining age 65, he or she will need to apply at a local Social Security Administration office to receive Part A and Part B benefits. If the judge is receiving Social Security benefit payments, the judge will be enrolled automatically in both Part A and Part B. Enrollment in Part A and Part B is automatic at any age after Social Security disability benefits have been received for two years. Because a monthly premium is required under Part B, judges enrolled automatically in Medicare are given the option of turning down Part B coverage.

A judge may apply for Part B coverage during one of the following:

- an initial seven-month enrollment period commencing three months before the judge attains age 65;
- at any time after age 65 as long as the judge remains in office and is covered by an FEHB plan; or
- an eight-month enrollment period commencing when the judge retires or declines to continue participating in the FEHB program.

When enrollment occurs during one of these periods, Part B coverage is generally effective the first day of the month after the judge enrolls, but cannot begin until the judge reaches age 65. If a judge applies during the initial enrollment period at or after turning 65, coverage is delayed for one to three months depending on the actual time of the application. If a judge applies during the month that he or she retires or ceases to be covered by an FEHB plan, coverage begins on the first day of that month, but can be deferred up to three months.

Judges may also apply for Part B coverage during the open seasons held annually from January through March. In those cases, coverage begins the following July. The monthly premiums for judges who enroll in Part B outside the enrollment periods described in the preceding paragraph are subject to a 10% surcharge for each 12-month period in which the judge had deferred enrollment in the program after becoming eligible.

COSTS

Premium, deductible and coinsurance amounts for Part A and Part B are set each year effective January 1 based on formulas established by law. 42 U.S.C. §§ 1395r, 1395u. A monthly premium for Part A coverage is required only if the insured has fewer than 40 quarters of wages subject to FICA tax. For 2000, the Part B monthly premium is \$45.50 per enrollee. Premiums are automatically deducted from a judge's Social Security retirement benefit payment. A judge not receiving those payments must pay the premiums directly to HCFA.

For 2000, the deductible for Part A inpatient hospital care for each benefit period beginning on the date of admission and ending after discharge for 60 consecutive days is \$776. Medicare pays all other costs for the first 60 days, and all but \$194 per day coinsurance for the 61st through the 90th day. A lifetime quota of 60 reserve days may be used for hospitalizations of more than 90 days. For 2000, Medicare pays all costs except \$388 per day coinsurance when a reserve day is used.

In general, Part B medical insurance will pay 80% of the charges for covered service a person receives during the year after an annual deductible of \$100. In addition to the 20% coinsurance, the judge is responsible for any charges above the amounts specified for particular services in the Part B fee schedule unless the health care provider agrees to accept assignment of the scheduled fee amounts as full payment for services rendered. Because there are about 200 distinct geographic areas under the Medicare fee schedule, benefit payments may differ from locale to locale.

Medicare benefits may be received through the fee-for-service system or through a managed care plan (e.g., health maintenance organization). While the standard Medicare deductibles and coinsurance are not required under managed care plans, each plan has its own premium and copayment requirements. Enrollment in Part B is a prerequisite to participation in a managed care plan, and the Part B monthly premiums must still be paid.

RELATIONSHIP BETWEEN MEDICARE AND FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

For judges continuing in office after age 65, the judge's FEHB plan (see Chapter 10) remains his or her primary health insurance. 42 U.S.C. § 1395y(b). Upon

retirement, Medicare replaces the FEHB plan as the judge's primary health insurance if the judge is or becomes enrolled in Part A and/or Part B.

Medigap Insurance

At any time after a judge age 65 or older becomes covered under Part B, he or she may buy a standard Medicare supplemental private insurance (Medigap) policy to cover specific expenses that are not covered or not fully covered by Medicare. A six-month Medigap open enrollment period begins from the date the judge enrolls in Part B and is age 65 or older. During this period, the judge cannot be denied coverage or charged higher premiums for a Medigap policy because of poor health. Since Medigap policies may duplicate benefits provided under an FEHB plan, and Medicare and FEHB plan benefits are coordinated, a judge may not need Medigap insurance.

MEDICARE ENROLLMENT CONSIDERATIONS

Upon attaining age 65, judges have several options concerning Medicare and FEHB coverage. The judge may choose to enroll in Medicare Part A, enroll in Medicare Part B, buy Medigap insurance, and/or change, suspend, or cancel FEHB coverage. Among the factors influencing these decisions are the judge's overall health and medical needs, the comparative costs and benefits under Medicare and FEHB, and the eligibility of the judge's family members for Medicare coverage. Other considerations include the following:

- Most individuals qualifying for premium-free Part A coverage enroll in Part A as soon as they are eligible. If a judge is not enrolled in Part A after attaining age 65, his or her FEHB plan must base its payments (and Medicare-participating hospitals must base their charges) on the Part A fee schedule.
- Since the benefits are coordinated, judges covered by both Part B and an FEHB plan may receive more comprehensive health coverage. If a judge is not enrolled in Part B after attaining age 65, his or her FEHB plan must base its payments for Medicare-covered physician services on the Part B fee schedule.
- Physicians participating with Medicare (*i.e.*, those accepting assignment of Medicare payments for service rendered) may not charge more than the Part B fee schedule amount. Non-participating physicians (*i.e.*, those not accepting assignment) may not charge more than 115% of the Part B fee schedule amount. These limits also apply to physician services provided to a judge covered by an FEHB plan who is not enrolled in Part B after reaching age 65.
- Before deciding not to elect Part B during the enrollment period beginning upon retirement or discontinuation of FEHB coverage, a judge should consider whether he or she would still ultimately decide to enroll in Part B at a later date when a delayed-enrollment surcharge on the monthly premium would be applicable.

- The manner in which a judge prefers to receive health care benefits may influence the judge's enrollment decisions. FEHB benefits are provided through managed fee-for-service plans, plans offering point-of-service product, or managed care plans (e.g., health maintenance organizations), and Medicare benefits are provided through fee-for-service plans and managed care plans. A judge might, for example, enroll in a Medicare fee-for-service plan and use a low option FEHB fee-for-service plan to fill in the gaps in Medicare coverage. Alternatively, a judge may choose to obtain health benefits solely through an FEHB or Medicare managed care plan.
- Since FEHB and Medicare managed care plans generally operate in limited geographical areas, a judge should consider the extent to which he or she will reside year-round in a particular plan's service area.
- A judge should exercise caution in discontinuing FEHB coverage without ascertaining whether he or she will be permitted to re-enroll at a later date. A retired judge may suspend his or her participation in FEHB after enrolling in a Medicare managed care plan without losing the right to re-enroll in FEHB. The judge may re-enroll in FEHB during the annual FEHB open season, or if the judge moves out of the Medicare plan's service area. Before suspending or canceling FEHB coverage, a judge should consider the extent to which Medicare—and Medicare managed care plans—will cover his or her health care needs, especially if a specific need or pre-existing condition influenced the decision to enroll in a particular FEHB plan.

FURTHER INFORMATION

More detailed information on Medicare can be obtained by contacting the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, at (202) 502-1880. HCFA publishes a comprehensive guide to Medicare benefits entitled *Your Medicare Handbook*, which can be obtained by writing to HCFA, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. The handbook and other information on Medicare is also available from HCFA on its Internet website (<http://www.hcfa.gov>).

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SUPPLEMENTAL BENEFITS

In 1996, the Judicial Conference's Committee on Judicial Resources approved a proposal from the Administrative Office for a "Judiciary Benefits Initiative" that would study existing federal employee benefit programs to assess whether they meet the needs of federal judiciary personnel, to identify gaps in coverage, and to suggest possible improvements. As a result of the initiative, the judiciary began, in fiscal year 2000, to offer judges and other judicial branch employees an opportunity to participate, on an employee-pay-all basis, in certain benefits that supplement the core benefits they receive as part of the federal government work force. These benefits presently include: (1) a long-term care insurance plan; and (2) a program of "flexible" health-care and dependent-care benefits. In its continuing commitment to addressing the benefit needs of judges and other judicial branch employees, the judiciary is also exploring additional kinds of supplemental benefits that might be offered.

LONG-TERM CARE INSURANCE

The Federal Judiciary Long-Term Care insurance plan is made available to officers and employees of the judicial branch under an agreement between the Administrative Office and the Continental Casualty Company (one of the CNA insurance companies). The plan covers the following services:

- nursing home care (covering all levels—skilled to custodial—received in a licensed facility);
- community-based care, including assisted living facilities, adult day care, and home health services;
- hospice care;
- caregivers and caregiver training; and
- alternate plans of care.

Eligibility and Enrollment

The following bankruptcy judges and magistrate judges and members of their families are generally eligible for coverage under the Long-Term Care plan:

- all bankruptcy judges and full-time or part-time magistrate judges in active service;
- all bankruptcy judges and magistrate judges in full-time or extended recall service;
- all bankruptcy judges and magistrate judges who have retired under a *judiciary-sponsored* retirement program (i.e., the JRS program described in chapter 3); and
- spouses, parents, parents-in-law, grandparents, and grandparents-in-law of any of the above-described judges.

CNA has agreed to offer three open enrollment periods during a five-year period. The first of these periods was held from October 1 to November 30, 1999; the second and third will be held at times to be announced. Any judge in active service or in full-time or extended recall service who files an Enrollment Form during an open enrollment period is *guaranteed coverage, regardless of the judge's health*. The same guarantee applies to any newly appointed judge who files an Enrollment Form within 60 days after notification of eligibility from CNA. Any other judge or family member who is generally eligible for coverage must first (1) apply to CNA, (2) meet the company's health and underwriting standards, and (3) be offered coverage by CNA before enrollment can occur. To apply in the latter case:

- An active or recalled judge who seeks to enroll outside an open enrollment period must complete a Short Form Application, which asks questions concerning the applicant's health and medical history.
- A spouse of an active or recalled judge must complete the Short Form Application.
- A retired judge, spouse of a retired judge, or parent, parent-in-law, grandparent, or grandparent-in-law of an active, recalled, or retired judge must complete a Long Form Application, which contains a detailed questionnaire about the applicant's health and medical history.

Coverage Options

When enrolling under the Long-Term Care plan, a judge or family member may select one of four options for the maximum nursing home care benefit:

- \$95 per day
- \$140 per day
- \$185 per day
- \$250 per day.

The plan protects against inflation by guaranteeing most enrollees an opportunity, every three years, to purchase additional amounts of coverage that increase the maximum nursing home care benefit by not less than a compounded 5% annual rate. Alternatively, an enrolling judge or family member may, at the time of enrollment, elect

a Lifetime Compounded Automatic Benefit Increase option that provides an annual compounded 5% increase in the maximum nursing home care benefit for the life of the policy. In choosing either form of inflation protection, an enrollee should consider such factors as his or her age and overall health, bearing in mind that protecting against inflation also increases the amount of premium payments.

All other benefits under the Long-Term Care plan (community-based care, hospice care, caregiver services) are derived from the maximum nursing home care benefit option selected. For example, the maximum daily community-based care benefit will be 60% of the maximum daily nursing home benefit.

In addition to the daily benefit limits, the Long-Term Care plan has a lifetime maximum benefit based on the maximum daily nursing home benefit that is selected. It is expressed as a dollar amount as follows:

Daily Nursing Home Benefit Option:	Corresponding Lifetime Maximum Benefit
\$95	\$174,000
\$140	\$256,000
\$185	\$338,000
\$250	\$457,000

The premiums for each coverage option are based upon the enrolling judge's or family member's age at the time of enrollment. For example, a judge who enrolls at age 45 pays \$18.95 per month for the \$95/day benefit, while a judge who enrolls at age 55 pays \$39.28 per month and a judge who enrolls at age 65 pays \$88.86 per month. If the judge elects the Lifetime Compounded Automatic Benefit Increase, these premiums are \$47.47, \$84.03, and \$160.53, respectively.

FLEXIBLE BENEFIT PROGRAM

The Federal Judiciary Flexible Benefit program offers pre-tax health-care and dependent-care benefits to judicial branch officers and employees in accordance with section 125 and 129 of the Internal Revenue Code. The program is administered, under contract with the Administrative Office, by SHPS, Incorporated. It consists of the following components:

- A **Premium Payment Plan** that allows a judge enrolled in a federal health insurance plan to deduct the cost of that plan from his or her gross salary *before* taxes are withheld.
- Two **Flexible Spending Accounts**—
 - A **Health Care Reimbursement Account** that allows a judge to set aside pre-tax dollars from his or her paycheck to cover eligible health-care expenses not covered by any medical, dental, or vision care plan that a judge and/or dependent may have. Eligible expenses include medical deductibles, co-payments, chiropractic services, back supports, bereavement and grief

counseling, birth control pills and devices, transplants, child birth preparation classes, contact lenses and supplies, crutches, diabetic supplies, eye exams and eye glasses, hearing aids, orthodontia, orthopedic shoes, respirators, automobile equipment to assist the physically disabled, and wheelchairs.

- A **Dependent Care Reimbursement Account** that allows a judge to set aside pre-tax dollars from his or her paycheck to cover eligible dependent-care expenses. Eligible expenses include child care at a day camp or nursery school or by a private sitter in the judge's home, elder care for an incapacitated adult who lives with the judge at least 8 hours a day, expenses for pre-school and after-school care, and the cost of a housekeeper whose duties include the care of a qualifying dependent.

Eligibility and Enrollment

All bankruptcy judges and full-time or part-time magistrate judges in active service, and all bankruptcy judges and magistrate judges in full-time or extended recall service, are eligible to participate in the Flexible Benefit program. *Retired judges are not eligible to participate except during full-time or extended recall service.* Enrollment may occur as follows:

- A judge is automatically enrolled in the Premium Payment Plan unless an affirmative election is made to have health insurance premiums deducted on an *after-tax* basis. For recalled judges, only those who have retired under a judiciary-sponsored retirement program (*i.e.*, the JRS program) can participate in this plan.
- A judge may elect to enroll in one or both accounts during an annual open enrollment period (the first was held from November 1 to November 20, 1999; others will be held at times to be announced).
- Newly appointed judges may enroll in one or both Flexible Spending Accounts within 60 days after notification of eligibility by SHPS.

When enrolling in a Flexible Spending Account, a judge elects to make contributions to the account by reducing his or her salary by a specified amount on a pre-tax basis. The election remains in effect until the end of the tax year for which the election is made, and it cannot be changed during that time except when there is a qualifying life event (such as marriage or birth of a child) as defined by the Internal Revenue Service. Enrollment in a Flexible Spending Account is *not* automatic, and if a judge wishes to begin, continue, or resume participation in one or both accounts in a given year, he or she must enroll and specify the salary reduction amount(s) during the open enrollment period for that year.

The maximum annual amount that can be contributed to each Flexible Spending Account is \$5,000. To qualify for the favorable tax treatment, a "use it or lose it" rule applies to these accounts. Thus, if a judge overestimates eligible expenses and con-

tributes too much pre-tax salary to an account, the unused amount is forfeited at the end of the year. For this reason, careful planning is required to use these accounts most effectively.

FURTHER INFORMATION

For more detailed information on the Federal Judiciary Long-Term Care plan, judges may wish to:

- refer to the plan brochure prepared by CNA (provided to all judges);
- call CNA's toll-free customer service number (1-877-512-4007); or
- go to the CNA website on the Internet at www.cnaltc.com.

For more detailed information on the Federal Judiciary Flexible Benefit program, judges may wish to:

- refer to the plan brochure prepared by SHPS (provided to all judges);
- call a SHPS benefits counselor, toll-free, at 1-888-442-FLEX; or
- go to the SHPS website on the Internet at www.shps.net.

Information on the judiciary's supplemental benefits programs is also available from the Judiciary Benefits Program ("Benefits Online") website on the J-Net, or by contacting the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division, at (202) 502-1880.

PART THREE

Retirement Planning

13

RETIREMENT

ELECTION

CONSIDERATIONS

The benefits available under CSRS, FERS and JRS vest at different points in time. Since an election to participate in JRS is normally irrevocable and can be made up to 30 days before leaving office, it is critical that a judge consider the different vesting requirements under each system before making a retirement election. An analysis of the vesting requirements for disability, nondisability and survivor annuities under each system is set forth in this chapter. Additional election considerations are discussed as well.

DISABILITY ANNUITY

Judges covered by FERS are eligible for a disability annuity after 18 months of creditable service. Any judge currently covered by CSRS is also eligible for a disability annuity since the statutory minimum five-year service requirement has already been met.

It takes five years of creditable judicial service for a disability annuity under JRS to vest. Therefore, if a judge elects JRS coverage before completing five years of judicial service and becomes disabled during that period, he or she would not be eligible for a disability annuity. A judge would be eligible for a disability annuity by remaining under FERS (assuming 18 months of service) or CSRS.

The Administrative Office has concluded that a JRS election may be made after a judge is disabled, provided the election and deposit for past service are received by the Administrative Office no later than 30 days before the judge officially leaves office. The deposit must cover at least five years of full-time service as a bankruptcy judge or magistrate judge.

NONDISABILITY ANNUITY

A judge under CSRS or FERS can receive an unreduced, nondisability annuity with 5 years of service payable at age 62, and with 30 years of service as early as age 55.

It requires eight years of service as a judge for a JRS nondisability annuity to vest. The JRS annuity is payable at age 65. If a judge is vested in a CSRS or FERS annuity (based upon five years of service) but has less than eight years of judicial service, he or she may want to consider delaying election into JRS, particularly if there is a reasonable possibility of leaving office prior to satisfying the eight-year JRS vesting period.

DISCONTINUED SERVICE ANNUITY

A judge under CSRS or FERS who separates from office upon expiration of a term of office may be eligible for an immediate discontinued service annuity based upon an “involuntary” separation. A judge is entitled to a discontinued service annuity if (1) the judge is age 50 with 20 years of creditable federal service or any age with 25 years of service at the time of separation and (2) a completed Form 1510 is submitted to OPM certifying that the judge was not given a written offer of another position in the district. This rule also applies to magistrate judge positions abolished by the Judicial Conference. A judge need not seek and be denied reappointment to be eligible for a discontinued service annuity. The CSRS annuity is reduced 2% for each year the judge is under age 55.

A discontinued service annuity is not available under JRS. But an unreduced annuity will be provided at age 65 to a judge under age 65 at the time of separation if the judge was not reappointed after notifying the court of his or her willingness to serve an additional term. In contrast, a judge who elects JRS and voluntarily leaves office before age 65 receives a JRS annuity reduced 2% per year for each year that the judge is less than age 65, subject to a maximum reduction of 20%. Under no circumstances is a JRS nondisability annuity payable before age 65.

SURVIVOR ANNUITY

CSRS and FERS offer survivor annuities. While JRS does not provide a survivor annuity, a judge may obtain an annuity by electing to participate in JSAS within six months after taking office, marriage, or elevation to a higher office or within a statutorily authorized open season. A judge may elect JSAS while under CSRS or FERS, but must retire under JRS to continue JSAS coverage after retirement. The survivor annuities under JSAS and CSRS generally vest after a judge completes 18 months of service. Under FERS, a death benefit vests after a judge completes 18 months of service, while a survivor annuity generally vests after a judge completes 10 years of service.

If a judge who has elected JSAS dies in office, having delayed election into JRS, the judge's spouse may be entitled to a survivor annuity under both JSAS and the retirement program that the judge was under at the time of death (CSRS or FERS). However, the years of service used in computing the JSAS survivor annuity cannot also be used in computing the CSRS or FERS survivor annuity. If a judge dies in office

while still under FERS, the surviving spouse is also entitled to a one-time lump-sum FERS death benefit. Therefore, if a judge electing JSAS wishes to provide additional survivor income protection for a spouse while in office, he or she may want to consider delaying an election into JRS.

The election of JRS coverage voids all benefits under CSRS and FERS, including survivor benefits (except for judges in office on November 15, 1988, who elect the JRS “hybrid” annuity, discussed on pages 72-73). *Therefore, if a judge elects JRS without having elected JSAS, no survivor annuity would be payable to a spouse upon the judge’s death. If no survivor annuity is payable, the surviving spouse will also be ineligible for continued health coverage under the Federal Employees Health Benefits program.*

THRIFT SAVINGS PLAN

Judges covered by JRS and CSRS may contribute a maximum of 5% of salary to the Thrift Savings Plan (TSP) on a tax-deferred basis, with no matching government contributions. A judge covered by FERS may contribute up to 10% of salary to TSP on a tax-deferred basis, with matching government contributions of up to 5% of salary. Under IRS rules, a maximum of \$10,000 (excluding government matches) can be contributed to TSP in 1999.

A judge under FERS who delays electing JRS could continue to make tax-deferred contributions into TSP at up to the 10% level, as opposed to the 5% cap for JRS participants. The judge would continue to receive matching government contributions, and earn tax-deferred interest income on those matching contributions. If the judge elects JRS, the JRS annuity will be temporarily reduced over a 12 or 24 month period to recover an amount representing all government contributions to the judge’s TSP account during his or her service as a full-time judge.

ANNUAL COST

All judges are subject to the Social Security Federal Insurance Contributions Act (FICA) tax, which includes a 6.2% tax for Old Age, Survivors, Disability Insurance (OASDI) and a 1.45% tax for Medicare hospital insurance. The annual cost of each retirement program is set forth below:

JRS	1% of salary for each year of covered service for up to 14 years
FERS	1.2% of salary per year in 2000 (increasing to 1.3% in 2001 and decreasing to 0.8% in 2003)
CSRS	8.4% of salary per year in 2000 (increasing to 8.5% in 2001 and decreasing to 8.0% in 2003)
CSRS Offset	2.2% of salary in 2000 up to the OASDI wage base (\$76,200 for 2000), then 8.4% of salary

for the balance of the calendar year in 2000 (increasing to 8.5% in 2001 and decreasing to 8.0% in 2003)

After a judge makes a JRS election, his or her FERS contributions are subject to refund at market-rate interest. Since no interest is assessed on a deposit for prior service under JRS, a judge covered under FERS may have a financial incentive for delaying his or her JRS election. A judge may also wish to delay applying for a refund of FERS contributions after electing JRS, since interest on the FERS contributions will continue to accrue through the last day of the month preceding the date the refund is paid. CSRS contributions are refunded without interest.

APPOINTMENT TO ARTICLE III JUDGESHIP

A magistrate judge or bankruptcy judge who is elevated to an Article III judgeship, having previously elected JRS, cannot receive a JRS annuity unless the judge resigns from the Article III office before retiring or taking senior status under the “Rule of 80.” If the judge retires or takes senior status, he or she will receive a refund of JRS contributions, plus interest. A judge who retains CSRS or FERS eligibility on appointment to the Article III bench will receive a deferred CSRS or FERS annuity for non-Article III federal service, including magistrate judge or bankruptcy judge service, and retirement compensation for Article III service when he or she retires from office or takes senior status.

RETURNING TO PRIVATE PRACTICE OR OTHER GOVERNMENT SERVICE

A judge who retires under JRS and practices law without first filing an election to practice law, or practices law before the election becomes effective, forfeits the entire JRS annuity for life. A judge who makes an election to practice law is entitled to receive a JRS annuity, but forfeits any future cost-of-living adjustments on that annuity after the election becomes effective. No such penalties apply to CSRS or FERS annuitants who practice law.

A judge who retires under JRS and later accepts civilian employment with the federal government (other than for service as a recalled judge) cannot receive a JRS annuity during the time that compensation is being received for the later government service. Under CSRS and FERS, a reemployed annuitant (including a recalled judge) generally continues to receive an annuity, but his or her compensation is offset by the amount of that annuity.

SPECIAL CONSIDERATIONS FOR CERTAIN JUDGES— THE “HYBRID” ALTERNATIVE ANNUITY

Full-time judges who were in office on November 15, 1988, (including judges who had served as part-time magistrate judges at that time) may select the “hybrid”

alternative annuity under JRS. Under this option, a judge is entitled to a proportionate JRS annuity for creditable full-time judicial service designated by the judge, on or after October 1, 1979, *in addition to* a CSRS or FERS annuity payable for at least five years of federal civilian service occurring before the date designated by the judge. *There is no minimum number of years required for the JRS portion of a “hybrid” alternative annuity to vest.* To be eligible for a disability annuity under the “hybrid” plan, however, a judge must have five years of creditable judicial service covered by JRS.

The spouse of a judge who elects the “hybrid” alternative plan may be eligible for a survivor benefit under the CSRS or FERS portion of the aggregate annuity, and, if the judge has elected to participate in JSAS, for a survivor annuity under JSAS based on periods of service designated for JRS.

Because at least five years of civilian service under the “hybrid” alternative annuity has to be designated under FERS or CSRS, the JRS portion of the aggregate annuity may be less than if a straight JRS annuity had been elected. However, for those judges who may leave the bench before age 65, those who do not elect JSAS coverage, or those who seek additional survivor coverage for a spouse, the “hybrid” annuity may be desirable.

SUMMARY OF RETIREMENT ELECTION CONSIDERATIONS			
	FERS	CSRS	JRS
Disability Annuity- Minimum Service to Vest	18 months	5 years	5 years
Eligibility for Immediate Unreduced Annuity Upon Voluntary Retirement			
Minimum Age:	55-57	55	65
Service:	30 years	30 years	8 years Straight 0 years Hybrid
Survivor Annuity - Minimum Service to Vest	10 years (18 months for death benefit)	18 months	None, unless a participant in JSAS
Thrift Savings Plan Participation	Up to 10% of salary w/5% government match	Up to 5% of salary no match	Up to 5% of salary no match
Portability	Yes	Yes	No

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APPLYING FOR RETIREMENT

Advance planning will ease a judge's transition to retirement. A judge should consider contacting the Administrative Office's Article III Judges Division, Compensation and Benefits Branch, within a year of anticipated retirement to ensure that his or her employment records are complete and to verify all creditable federal civilian and military service. In addition to reviewing benefits under the applicable retirement plan, including survivor benefits, the judge should consider reviewing his or her health and life insurance situation under the FEHB and FEGLI programs. At least six months before retiring, judges participating in TSP should consider the relative merits of the various TSP withdrawal options, and determine what to do with funds in their TSP account.

BASIC RETIREMENT FORMS

Retirement application forms should be completed and submitted to the Judges Compensation and Benefits Branch at least two months before retirement.

Judges retiring under CSRS should submit:

- SF-2801, Application for Immediate Retirement
- DD-214, Military Discharge Papers (if applicable)
- SF-2818, Continuation of Life Insurance Coverage
- SF-1199A, Direct Deposit Sign-Up Form.

Judges retiring under FERS should submit:

- SF-3107, Application for Immediate Retirement
- DD-214, Military Discharge Papers (if applicable)
- SF-2818, Continuation of Life Insurance Coverage
- SF-1199A, Direct Deposit Sign-Up Form.

Judges retiring under JRS should submit:

- PER-71, Application For An Annuity
- PER-73, Deposit/Redeposit Payment
- SF-2818, Continuation of Life Insurance Coverage
- SF-1199A, Direct Deposit Sign-Up Form.

In addition to the JRS application forms, judges entitled to a CSRS or FERS annuity under the “hybrid” alternative plan of JRS should submit:

- SF-1496A, Application for Deferred Retirement under the Civil Service Retirement System; or
- SF-3107, Application for Retirement under the Federal Employees’ Retirement System.

APPLYING FOR SOCIAL SECURITY

Individuals can apply for Social Security benefits at any Social Security office, or by calling the Social Security Administration’s toll-free number at (800) 772-1213. The Social Security Administration recommends that individuals apply for benefits four months before they want their benefits to commence.

Applicants need to furnish the following documents when applying for Social Security:

- Social Security number
- certified copy of birth certificate or other evidence of date of birth, if the birth certificate is unavailable
- most recent W-2 form
- military discharge papers (if applicable)
- spouse’s birth certificate and Social Security number (if spouse is applying for benefits)
- children’s birth certificate and Social Security numbers (if applying for children’s benefits)
- checking or savings account information, so benefits can be directly deposited.

PART FOUR

Working After Retirement

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RECALL

A retired judge may be recalled to service in accordance with regulations promulgated by the Judicial Conference under 28 U.S.C. § 155(b) (for bankruptcy judges) or § 636(h) (for magistrate judges). Under the Conference regulations governing “ad hoc” recall service, a retired bankruptcy judge or magistrate judge may be recalled for renewable periods of up to 1 year and 1 day. The Conference regulations are set forth as Appendices D and E.

A retired bankruptcy judge or magistrate judge may also be recalled to serve for renewable periods in excess of 1 year but not exceeding 3 years under separate Judicial Conference regulations governing “extended service” recall. The extended service recall regulations are set forth as Appendices F and G.

ELIGIBILITY

Any judge (including a part-time magistrate judge) receiving an annuity under CSRS, FERS, JRS, or the “hybrid” alternative plan is eligible to be recalled to service under the ad hoc provisions on a full-time or “when-actually-employed” basis. To be eligible for extended service recall, a judge must have retired on full salary under either JRS or the “hybrid” alternative *and* be at least 65.

The ad hoc recall regulations for bankruptcy judges do not contain workload standards. The comparable magistrate judge regulations state that a magistrate judge retiring on less than full salary who is recalled on a full-time basis is expected to perform judicial and administrative duties commensurate with the level of compensation received (i.e., the difference between the judge’s annuity and the current salary of a full-time magistrate judge in the district in active service).

The judicial council of the circuit within which a bankruptcy judge or magistrate judge is recalled to duty on an extended service basis must certify that the judge is

expected to perform “substantial service” during the period of recall. The bankruptcy extended service recall regulations do not define substantial service. The comparable magistrate judge regulations define substantial service as no less than an annual workload equal to or greater than the average amount of work that a full-time magistrate judge in active service would perform in three months.

A judge who retires after electing JRS or “hybrid” JRS and who thereafter practices law for compensation is not eligible to be recalled to service.

APPOINTMENT

A circuit judicial council may recall a retired judge with the judge’s consent. A request for recall service of a magistrate judge is made to the circuit judicial council by (and with the consent of) the chief district judge of the district where the magistrate judge is to serve. A retired bankruptcy judge will typically apply for recall service by making a written application to the circuit judicial council either by letter or by such form as the circuit judicial council may prescribe. In some circuits, however, the circuit executive (or a designee) will contact retired bankruptcy judges to determine their interest in and availability for recall service.

A retired judge is not limited to service in the district or circuit where he or she formerly served, but may be recalled in any judicial district by the judicial council of the circuit within which the district is located. The ad hoc and extended service recall regulations for bankruptcy judges provide that the chief judge of a court of appeals considering the recall of a bankruptcy judge is entitled to full access to all pertinent information concerning a retired bankruptcy judge who has served in a different circuit. In the case of a magistrate judge, the chief judge of the district in which a recalled magistrate judge formerly served must be notified of a request to recall the magistrate judge outside the district. A request for intercircuit recall of a retired magistrate judge must be forwarded through the Administrative Office to the Committee on the Administration of the Magistrate Judges System for approval.

To effect a recall, an order is issued by the judicial council of the circuit in which the bankruptcy judge or magistrate judge will serve. The order states that the judge has consented to perform recall service and generally specifies the terms of the service, including the duration and manner of service (e.g., if not full-time, the estimated number of days of service to be performed during the recall term). The order of recall of a magistrate judge may be modified or terminated at any time by the circuit judicial council. The recall of a bankruptcy judge may be terminated at any time by the circuit judicial council.

Upon the expiration of a term of recall, the circuit judicial council may renew the order of recall for an additional term. There is no limit to the number of recall periods.

Copies of appointment forms and detailed instructions and advice on the recall of bankruptcy judges and magistrate judges are available, respectively, from the Bankruptcy Judges Division, (202) 502-1900, or the Magistrate Judges Division (202) 502-1830.

COMPENSATION

The compensation of a recalled judge is subject to the same limitations applicable to reemployed federal annuitants generally. Accordingly, a judge recalled on a full-time basis under the ad hoc regulations, or a substantial service basis under the extended service regulations, is entitled to the salary payable to a full-time bankruptcy judge or magistrate judge less the annuity allocable to the period of recall service.

For example, a judge who retires with an annuity equal to 100% of the salary of the office would receive no additional compensation for recall service. On the other hand, a judge who retires from office with an \$80,000 annuity and is recalled to service on a full-time basis would be entitled to the difference between the annuity and the current salary of the office. Accordingly, if the salary of the office were \$129,996, the judge would earn “wages” of \$49,996 in addition to the \$80,000 annuity.

The compensation of a retired judge recalled to serve on a “when-actually-employed” basis under the ad hoc recall regulations is computed on a daily basis. For each day of service, the judge receives the maximum daily salary payable to a full-time bankruptcy judge or magistrate judge, less the portion of the judge’s annuity allocable to that day.

For example, if the salary of the office were \$129,996, the daily salary rate would be equivalent to about \$500 (*\$129,996 divided by 260 days—the number of days in a standard work year*). If the judge were receiving an annuity of \$80,000, the daily proportion of the annuity would be equivalent to about \$222 (*\$80,000 divided by 360 days—the number of days using 30-day calendar months*). Therefore, the judge would receive “wages” of about \$278 per day for recall service in addition to the annuity (*\$500 less \$222*). The judge’s total compensation (annuity plus wages) for each day of recall service would be \$500, equal to the full salary of the office for that day.

The “wages” of a magistrate judge recalled on a “when-actually-employed” basis may not exceed the salary of an active part-time magistrate judge compensated at Salary Level 1 (\$60,039 in 2000). A recalled bankruptcy judge or magistrate judge serving on a “when-actually-employed” basis must certify monthly to the Judges Compensation and Benefits Branch of the Administrative Office’s Article III Judges Division the number of days (not hours per day) actually worked.

SUPPORT SERVICES

Subject to the approval of the judicial council of the circuit, a recalled judge may be provided with secretarial and law clerk assistance, office and courtroom facilities, lawbooks, equipment, stationery, and other supplies necessary for the performance of official duties, to the extent that support is not available from existing resources.

RETIREMENT INCOME

Supplemental or Recomputed Retirement Annuity

A retired judge who is receiving an annuity under either CSRS or FERS (except for “hybrid” annuitants under JRS) may earn an increased annuity as a result of full-time recall service under the ad hoc regulations. For continuous, full-time recall service of at least 1 year but less than 5 years, the judge is entitled to a supplemental annuity equal to 2.5% (CSRS) or 1% (FERS) of the judge’s basic pay averaged during the recall period. If the continuous, full-time recall service is at least 5 years, the judge, in lieu of receiving a supplemental annuity, may elect to have the total CSRS or FERS annuity recomputed as if the judge were retiring for the first time with a new “average salary.”

For example, a retired judge who is paid a CSRS annuity of \$50,000, based on 20 years of service and a high-three “average salary” of \$100,000 at the time of retirement ($20 \text{ years} \times 2.5\% \times \$100,000$), would be entitled to a recomputed annuity of about \$81,248 after 5 years of recall service, assuming the salary of the office increased to \$129,996 after 2 years ($25 \text{ years} \times 2.5\% \times \$129,996$).

If a judge elected a reduced CSRS or FERS retirement annuity to provide for a survivor annuity, the judge’s supplemental annuity will also be reduced to provide for a supplemental survivor annuity, unless the judge waives a supplemental survivor annuity in writing. The spouse’s consent is not needed for such a waiver.

A recalled judge must contribute (or pay a deposit) to the Civil Service Retirement and Disability Fund in order to receive a supplemental or recomputed CSRS or FERS annuity. A judge is entitled to receive the supplemental or recomputed annuity only after there is a break in service of more than 3 days or the judge’s recall status changes from a full-time to a “when-actually-employed” basis.

Service on recall is not creditable to increase a judge’s annuity under JRS or the “hybrid” alternative.

Electing FERS Coverage During Recall Service

A judge enrolled in CSRS at the time of retirement may elect FERS coverage upon being recalled if the recall service begins after a break in service of more than three days and the recall appointment would not otherwise be excluded from FERS coverage. Although any FERS benefits that might accrue would be small, the cost of participation in FERS is low and, as explained below, a judge who elects FERS coverage upon

recall may contribute a higher percentage of salary to a TSP account. If a judge elects FERS coverage upon being recalled, any supplemental or recomputed annuity would be based on FERS.

Judicial Survivors' Annuities System

For a judge serving on recall status, the annual contribution rate for participation in JSAS is 2.2% of total recall compensation (annuity and salary). The contribution rate for retired judges not serving on recall is 3.5% of their JRS retirement annuity.

Thrift Savings Plan

Except for judges retired under JRS, recalled judges may participate in the Thrift Savings Plan to the same extent as other reemployed federal annuitants. Accordingly, a recalled judge who retired under FERS, or who retired under CSRS but elects FERS on recall, may contribute up to 10% of salary (with certain general limitations) into the TSP and receive matching government contributions up to 5%. A recalled judge who retired under CSRS and remains under CSRS may contribute up to 5% of salary. The tax advantages associated with the TSP, however, tend to be reduced at this late stage of a judge's career.

OTHER BENEFITS

Federal Employees Health Benefits Program

Ordinarily, enrollment in a FEHB plan will continue for judges upon retirement with the same benefits and costs as before retirement (see Chapter 10). No change in health benefits status occurs when a retired judge is recalled to service.

Supplemental Benefits

As described in Chapter 12, a retired judge in full-time or extended recall service is eligible to participate in the judiciary's Long-Term Care insurance and Flexible Benefit programs.

Federal Employees' Group Life Insurance

A retired magistrate judge or bankruptcy judge may be entitled to acquire federal life insurance coverage as an employee during the period of recall service, resulting in lower employee premium rates and a temporary suspension of the reduction in coverage that occurs when a retired judge reaches age 65 and has not elected to continue unreduced Options B and C. For each type of coverage, life insurance as a retiree is suspended upon acquisition of the same type of life insurance as an employee on recall.

A judge recalled on a full-time basis under the ad hoc recall regulations may acquire, at the employee rate, the Basic Life and any optional insurance coverage in

effect at the time of the judge's retirement if the recall appointment:

- begins four days or less after retirement (*i.e.*, with no break in service), or
- the recall appointment is for at least one year and one day.

Since all judges recalled on an extended service basis have an appointment of at least one year and one day, the Basic Life and optional insurance in effect at the time of retirement may always be acquired at the employee rate while on recall. A judge who is recalled on a "when-actually-employed" basis is not eligible to acquire life insurance coverage as an employee.

Recalled judges satisfying the requirements discussed above automatically acquire as employees the Basic Life, Option A, and Option C insurance that was in effect at the time of retirement. To acquire the Option B insurance that was in effect at the time of retirement a judge must complete a Standard Form 2817, Election of Life Insurance, and file it with either the Judges Compensation and Benefits Branch of the Administrative Office's Article III Judges Division or the clerk of court, within 31 days from the date the recall service begins.

The amount of Basic Life insurance and optional insurance acquired by a judge on recall is based upon the current salary of an active full-time magistrate judge or bankruptcy judge.

For example, if a judge retires on a salary of \$122,912, and chooses 100% Basic Life insurance coverage, the judge would have Basic Life insurance coverage of a retiree in the amount of \$125,000. If that judge is recalled (and meets the requirements for acquiring life insurance as an employee) and the salary of the office for an active full-time magistrate judge and bankruptcy judge is \$129,996, the judge, during the period of recall, would have Basic Life insurance coverage of \$132,000.

If the judge dies during recall service, the survivor will receive the amount of Basic Life and optional insurance that the judge had as a recalled employee.

A judge who is recalled to service may continue the life insurance coverage acquired as an employee into "re-retirement" at the end of his or her recall if the judge:

- has completed at least one year of continuous recall service;
- has qualified for a supplemental annuity or acquired a new retirement right under CSRS or FERS (for judges who retire under CSRS or FERS); and
- was covered by Basic Life and optional insurance for the 5 years of service immediately preceding separation from recall service or for the full period during which such coverage was first available, whichever is less.

Any Basic Life and Option B and C life insurance acquired on recall that is continued into "re-retirement" will not diminish (for being age 65 or older) if the judge elects to continue the coverage unreduced before separating from recall service. If a judge, upon separation from recall service, elects to continue the life

insurance acquired on recall with reduction, the life insurance will begin to diminish on the date the recall service ends (or at age 65 if later). If a judge is not entitled to continue life insurance acquired on recall into “re-retirement” (e.g., for full-time recall service of less than one year), the life insurance in effect at the time of the initial retirement will be reinstated in an amount the judge would have had if the retiree coverage had not been suspended, i.e., the coverage may be reduced for all periods that the judge was age 65 or older during his or her recall service (unless the judge previously elected to continue the life insurance unreduced at the time of his or her initial retirement).

A judge recalled on either a full-time basis for at least one year and one day or on an extended service basis may elect Basic Life and optional insurance *that had previously been waived* if the judge had a break in service of more than 180 days. No evidence of insurability is required to elect previously waived insurance.

PRACTICE OF LAW AND CODE OF CONDUCT

All retired bankruptcy judges, and all retired magistrate judges performing substantial service under the extended service regulations or full-time service under the ad hoc regulations, are prohibited from practicing law during the period of recall service. Magistrate judges recalled on a “when-actually-employed” basis under the ad hoc regulations (except for JRS and “hybrid” alternative annuitants) may practice law during the period of recall service.

The Code of Conduct for United States Judges applies to all recalled judges.

TRAVEL REIMBURSEMENT

For purposes of travel reimbursement, the location of a recalled judge’s home is considered to be his or her official duty station. See 28 U.S.C. § 374. When a recalled judge is holding court or otherwise transacting official business at a location other than his or her official station, and the location is outside the corporate limits of that residence, the judge is entitled to be reimbursed for both transportation and actual subsistence expenses incurred during the day. When the court or other duty location is within the corporate limits of the judge’s residence (official duty station), the judge can only be reimbursed for transportation expenses incurred between that residence and the duty location.

When a magistrate judge is recalled to serve on a full-time basis for one month or longer in a district other than the one from which he or she retired, the recall regulations (see Appendices E and G) limit reimbursement of subsistence expenses according to the length of the judge’s recall service. The Director of the Administrative Office is authorized to adjust those reimbursement limits where they are either too high or too low to compensate the recalled judge adequately.

Any new request for magistrate judge recall service in which the recalled judge's combined salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of \$50,000 is subject to the approval of the Committee on the Administration of the Magistrate Judges System.

SOCIAL SECURITY

Contributions

A judge who is recalled to service is subject to Social Security taxes only if he or she is receiving “wages” with respect to “employment.” A judge’s retirement annuity is not considered wages for purposes of the Social Security OASDI or Medicare tax. Accordingly, if a judge retires on a full salary annuity under 28 U.S.C. § 377(a) and is recalled immediately, he or she would not receive any “wages” for recall service because recall compensation is calculated upon the *difference* between the retirement annuity and the full salary of the office.

A judge who retires on less than full salary, or a judge who retires on full salary but is recalled to service after an increase in salary has been implemented, would receive wages subject to the 1.45% Medicare tax. But a recalled judge, as a reemployed annuitant, is exempt from having the 6.2% OASDI tax deducted from any wages earned for recall service. See 26 U.S.C. § 3121(b)(5)(B)(ii).

For example, a judge who retires with an immediate retirement annuity under CSRS of \$80,000 and is recalled upon retirement when the salary of the office is \$129,996 would receive “wages” for the year of \$49,996. The Medicare tax on those wages would be approximately \$725. No OASDI taxes would be withheld.

Earnings Test

Depending on his or her age, a recalled judge’s Social Security retirement benefits are subject to reduction under the “earnings test” if he or she earns wages over a specified exempt amount during the year (see discussion at page 32). The annuity portion of the compensation received by a recalled judge is not subject to the earnings test. Thus, the Social Security retirement benefits of a recalled judge who retired on a full salary annuity would not be reduced, absent an increase in the salary of the office exceeding the annual exempt limit.

For example, the Social Security retirement benefit of a recalled judge, 64 years old, who receives an annuity of \$80,000 and “wages” of \$49,996 (assuming the salary of the office is \$129,996) would be reduced for the \$39,916 portion that is considered excess earnings (*\$129,996 minus \$80,000 minus exempt amount of \$10,080*). As a practical matter, this reduction would substantially (if not completely) eliminate the Social Security benefit payable to the judge during that time.

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PRACTICE OF LAW

AFTER RETIREMENT

For judges retiring under the Judicial Retirement System (JRS), including the JRS “hybrid” alternative, there are certain limitations on post-retirement employment. In determining whether to engage in post-retirement employment a judge should consider whether the employment would constitute the practice of law as defined by the Regulations of the Director Implementing the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988. Additional limitations on employment after retirement from the bench are also discussed in this chapter.

THE PRACTICE OF LAW IS DEFINED BROADLY

Members of Congress, in the hearings leading to the enactment of JRS, expressed disapproval of a system which would permit retired judicial officers to receive generous annuities while also earning substantial income from the subsequent practice of law. In light of the clear intent of Congress, the Administrative Office has defined the term “practice of law” broadly. Section 3.05(d) of the Director’s Regulations defines the practice of law as follows:

[A]ppearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property of decedents’ estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law, . . . for compensation.

IMPACT OF MAKING PRACTICE OF LAW ELECTION

A judge who retires under JRS, including the “hybrid” alternative, and timely files an Election to Practice Law (form PER 75) forfeits any future cost-of-living adjustment in his or her JRS annuity once such an election takes effect. 28 U.S.C. § 377(m)(1)(B). (The forfeiture does not apply to the CSRS or FERS component of a “hybrid” alternative annuity.) The forfeiture of future COLAs for the practice of law applies both to judges who retire from office voluntarily and to judges who are involuntarily separated from office upon failure of reappointment. *Practicing law without first filing the election form or practicing law before the election becomes effective results in the forfeiture of the entire JRS annuity.* The election is effective on the first day of the month following the month in which the election is received by the Administrative Office. 28 U.S.C. § 377(m)(1)(B)(iii). The election, once it takes effect, is irrevocable. Form PER 75 must be filed with the Administrative Office and is available from the Article III Judges Division’s Judges Compensation and Benefits Branch, the Bankruptcy Judges Division, and the Magistrate Judges Division, and on the J-Net.

A judge who retires under JRS, including the “hybrid” alternative, and thereafter practices law for compensation is ineligible for recall service. 28 U.S.C. § 377(m)(2).

ADMINISTRATIVE OFFICE APPLICATION OF PRACTICE OF LAW REGULATIONS

The Administrative Office has received a number of questions from magistrate judges and bankruptcy judges concerning whether certain post-retirement employment constitutes the practice of law. Based on the language of section 3.05(d), the Administrative Office has concluded that the following specific activities, performed for compensation, *would* constitute the practice of law:

- Serving as an arbitrator;
- Serving as a mediator;
- Serving as a special master;
- Serving as a state court judge;
- Serving as an expert witness in a legal malpractice case; or
- Serving as an office manager for a law firm (to the extent that the retired judge consults with attorneys in the firm concerning “any matters of law” for compensation).

The Administrative Office has concluded that the performance of certain activities for compensation *would not* constitute the practice of law as defined in section 3.05(d), including:

- Serving as a law professor;
- Lecturing at business seminars (if no specific legal advice is given);
- Performing marriage ceremonies; or

- Serving as an officer for a private corporation (assuming that the position does not include the offering of legal advice).

The performance of legal services *without* compensation does not constitute the practice of law as defined in section 3.05(d). Accordingly, the performance of legal services on a *pro bono* basis would not require the filing of an Election to Practice Law form. The AO has concluded that the term “compensation” does include the free use of “facilities” of a law firm in exchange for advisory services, but does not include the reimbursement of simple out-of-pocket expenses for performing legal services.

Judges retiring under CSRS and FERS can practice law after retirement for compensation without affecting their annuities under those retirement systems.

OTHER CONSIDERATIONS

In addition to the practice of law limitations, a judge who retires under JRS and thereafter accepts compensation for “civil office or employment under the United States Government” forfeits the right to an annuity for the period in which compensation is received. 28 U.S.C. § 377(m)(3). *This limitation does not include service on recall.* The AO has concluded that the term “compensation” in section 377(m)(3) does not include the receipt of funds from private litigants by a retired judge for service as a federal court-appointed receiver.

Judges retiring under the JRS “hybrid” alternative who thereafter accept compensation for employment with the Government also forfeit the right to receive a JRS annuity for the period in which compensation is received. In addition, a “hybrid” alternative annuitant is ineligible to receive any additional retirement credit under CSRS or FERS for subsequent federal government service.

PART FIVE

Elevation to
Article III Status

17

ELECTIONS UPON APPOINTMENT TO AN ARTICLE III JUDGESHIP

When a newly-appointed bankruptcy judge or magistrate judge is making retirement decisions, consideration should be given to the possibility of eventual nomination to an Article III judgeship. Many magistrate judges and bankruptcy judges have been selected for the Article III bench, and most of them had substantial investments in one or more federal civilian or military retirement plans at the time of appointment to an Article III judgeship.

This chapter is intended to provide a brief overview of the special rules applicable to retirement benefits for Article III judges. The interaction of federal and civilian retirement plans with the retirement options available to Article III judges is complex, and significant financial consequences must be explored. For instance, most of the retirement plans include deferred benefit entitlements that may be paid to the judge in addition to any retirement compensation for service performed as an Article III judge. The right to receive a JRS annuity, however, is forfeited when a judge receives retirement compensation for Article III service.

SENIOR STATUS AND RETIREMENT FOR ARTICLE III JUDGES

The retirement and employment benefits of Article III judges are governed explicitly by statute and by regulations of the Judicial Conference of the United States. The applicable provisions are discussed in an Administrative Office publication entitled *Senior Status and Retirement for Article III Judges*, available from the Office of Judges Programs.

An Article III judge is entitled to receive retirement compensation upon meeting the age and service requirement of the Rule of 80, as set forth in 28 U.S.C. § 371(c). Beginning at age 65, an Article III judge may retire from office or take senior status after performing 15 years of active service as an Article III judge ($65 + 15 = 80$).

A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum 10 years of service ($70 + 10 = 80$). An Article III judge, regardless of age or length of service, may also retire from regular active service and take senior status if the judge becomes permanently disabled from performing judicial duties.

An Article III judge who meets the age and service requirements of the Rule of 80 is entitled to receive retirement compensation that is at least equal to the full salary of the office at the time of retirement. Upon meeting the requirements of the Rule of 80, the judge may make one of the following elections:

- Take senior status and retire from active service while retaining the judicial office. The retirement compensation of a senior judge is adjusted for cost-of-living allowances, and a senior judge who meets certain workload requirements is entitled to receive any post-retirement salary increases provided by Congress to active Article III judges. A senior judge remains a judicial officer and cannot practice law.
- Retire from office, relinquishing the judicial office irrevocably. The retirement compensation of a judge who retires from office is permanently frozen and is not subject to any post-retirement cost-of-living or other adjustments to the salary of the office. After retirement, the judge may practice law subject only to traditional ethical considerations on matters handled by the judge or pending in the court while in active service.

An Article III judge who resigns from office before becoming eligible to receive retirement compensation under the Rule of 80 forfeits the right to retirement compensation under 28 U.S.C. § 371 unless the judge is later appointed to an Article III judgeship and his or her age and total Article III service ultimately satisfies the Rule of 80.

CIVIL SERVICE RETIREMENT SYSTEM

Appointment to an Article III judgeship constitutes a separation from service for purposes of computing a CSRS annuity. By statute, an Article III judge is not considered an “employee” under CSRS. See 5 U.S.C. § 8331(1)(i). Therefore, a judge’s eligibility for a CSRS retirement annuity generally is based only on federal civilian or military service occurring before or after the judge’s Article III service. A special exception allows CSRS credit for service as an Article III judge only if the judge resigns from office, is later employed in a position covered under CSRS, and is not otherwise entitled to receive any retirement compensation for the Article III service. See 5 U.S.C. § 8332(b)(12).

Generally, a federal employee who separates from service before reaching the minimum retirement age is entitled to receive, if otherwise eligible, a deferred CSRS annuity at age 62. An Article III judge, however, is not entitled to receive a CSRS annuity

for prior government service while the judge remains in active service, regardless of age. A senior judge or a judge who retires from office is entitled, if otherwise eligible, to receive a CSRS annuity for prior federal service in addition to retirement compensation for services as an Article III judge.

A judge may elect to receive a lump-sum payment without interest of all contributions paid to the CSRS plan at any time while in active service as an Article III judge, provided that an application for a refund is filed more than 31 days before the judge becomes eligible to receive a CSRS annuity. See 5 U.S.C. § 8342(a). Once the judge elects and receives a refund of contributions into CSRS for the earlier federal service, the right to a future deferred CSRS annuity for that service is forfeited unless the judge is later employed in a position subject to CSRS and reestablishes entitlement to an annuity.

Article III judges may contribute up to 5% of salary to the TSP, but they do not receive matching government contributions. A magistrate judge or bankruptcy judge covered under CSRS who is appointed to an Article III judgeship without a break in federal service may carry over the balance of an account in the TSP and continue to contribute a portion of salary to it (up to 5% of salary).

A judge should consider carefully whether to forfeit a CSRS deferred annuity in return for a refund of all contributions or to retain CSRS coverage and receive a deferred annuity. The relative value of a deferred CSRS annuity will generally exceed the value of a lump-sum refund that has been invested during the period before the employee actually begins to receive the annuity. The advantages, disadvantages, and financial consequences of this decision are discussed in detail in the Administrative Office publication *Senior Status and Retirement for Article III Judges*, available from the Office of Judges Programs.

FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Appointment to an Article III judgeship constitutes a separation from service for purposes of computing a FERS annuity. By statute, an Article III judge is not considered an "employee" under FERS. See 5 U.S.C. § 8401(11)(i)(I). Therefore, a judge's eligibility for a FERS retirement annuity is based only on federal civilian or military service occurring before or after the judge's Article III service.

Under FERS, a federal employee who separates from service before reaching the minimum retirement age is generally entitled to receive, if otherwise eligible, a deferred defined benefits annuity as early as age 55. An Article III judge, however, is not entitled to receive a FERS annuity for prior government service while the judge remains in active service, regardless of age. A senior judge or a judge who retires or resigns from office is entitled, if otherwise eligible, to receive a FERS defined benefits annuity in addition to retirement compensation for service as an Article III judge.

A judge may elect to receive a lump-sum payment with interest at the market rate of all contributions paid to the FERS defined benefits plan any time while in active service as an Article III judge, provided that the application for a refund is filed more than 31 days before the judge becomes eligible to receive a FERS annuity. Once the judge elects and receives a refund of FERS contributions, however, all rights to a future annuity for the service upon which the contributions were based are forfeited irrevocably, even if the judge later reenters federal service covered under FERS.

Article III judges may only contribute up to 5% of their salary to the TSP, and they do not receive matching government contributions. A magistrate judge or bankruptcy judge covered under FERS who is appointed to an Article III judgeship without a break in federal service may carry over the balance of an account in the TSP and continue to contribute to it, but only up to 5% of salary.

A judge should consider carefully whether to forfeit a FERS deferred annuity in return for a refund or retain FERS coverage and receive a deferred annuity. In virtually all cases, the value of a FERS annuity is greater than the value of a refund of contributions, even with interest and investment returns factored into the calculations. The advantages, disadvantages, and financial consequences of this decision are discussed in detail in the Administrative Office publication *Senior Status and Retirement for Article III Judges*, available from the Office of Judges Programs.

JUDICIAL RETIREMENT SYSTEM

An Article III judge who previously elected JRS as a bankruptcy judge or magistrate judge loses the right to receive a JRS annuity when the judge retires from office or takes senior status under 28 U.S.C. § 371. Instead, the judge receives a refund of JRS contributions, with interest.

An Article III judge who resigns from office before age 65 without meeting the age and length of service requirements under 28 U.S.C. § 371 is entitled to receive, beginning at age 65, a JRS annuity for prior service as a bankruptcy judge or magistrate judge. The judge must have served a minimum of eight years as a bankruptcy judge or magistrate judge to qualify for a “straight” JRS annuity (no minimum service is required for a “hybrid” annuity), and 14 years to qualify for an annuity equal to the full salary of a bankruptcy judge or magistrate judge. Receipt of the JRS annuity (or the JRS portion of a “hybrid” annuity) is also subject to an early separation annuity reduction for separation before age 65.

Magistrate judges and bankruptcy judges with prospects for appointment to the Article III bench may wish to consider deferring an election into JRS. For financial reasons, many magistrate judges and bankruptcy judges defer making an election into JRS until shortly before actually leaving office. For those magistrate judges and

bankruptcy judges who are appointed to the Article III bench, the consequences of remaining under CSRS or FERS or electing JRS are often significant and far-reaching.

A JRS annuity is substantially greater than a CSRS or FERS annuity, even accounting for the maximum 20% reduction for early separation. Moreover, a refund of FERS or CSRS (especially CSRS) contributions upon election of JRS can be substantial. Therefore, a judge with prospects for an Article III appointment may wish to preserve the substantial benefits of a JRS annuity in the event the judge later resigns from an Article III judgeship to return to private practice or to accept another position in the federal government. The financial consequences of remaining under CSRS or FERS or electing JRS are discussed in detail in the Administrative Office publication *Senior Status and Retirement for Article III Judges*, available from the Office of Judges Programs.

JUDICIAL SURVIVORS' ANNUITIES SYSTEM

Magistrate judges or bankruptcy judges already participating in JSAS are not required to "re-elect" JSAS coverage if they are appointed to an Article III judgeship without a break in service. Deductions from their Article III salary will continue automatically at the 2.2% contribution rate.

A bankruptcy judge or magistrate judge who has waived the right to participate in JSAS has another opportunity to elect to participate in JSAS within six months of appointment to an Article III judgeship. A deposit may be made at that time to receive credit for prior federal service, including prior service as a bankruptcy judge or magistrate judge.

Appendices

Appendix A

COMPARISON OF RETIREMENT BENEFITS

IN GENERAL	FULL CSRS	OFFSET CSRS
SOCIAL SECURITY BENEFITS	Full benefits	Full benefits (CSRS annuity reduced by Social Security benefits attributable to service covered by both CSRS and Social Security)
ELIGIBILITY AND ELECTION TO PARTICIPATE BY DATE OF APPOINTMENT	On/before Dec. 31, 1983	On/before Dec. 31, 1983 (automatic coverage unless judge elected full or no CSRS coverage). After Dec. 31, 1983, if judge had completed five years of federal civil service prior to Dec. 31, 1986 (automatic, unless judge elects FERS or JRS)
CIVILIAN SERVICE REQUIRED FOR ANNUITY TO VEST	5 years	5 years
CREDIT FOR PRIOR CIVILIAN SERVICE	Yes (deposit for service may be required)	Same as full CSRS
CREDIT FOR PART-TIME SERVICE	Yes (partial credit for service after April 5, 1986)	Same as full CSRS
TOTAL COST OF COVERAGE	8.4% of salary (increasing to 8.5% in 2001, returning to 8% in Jan. 2003) plus Social Security plus Medicare.	8.4% of salary for both CSRS and Social Security combined, (increasing to 8.5% in 2001, returning to 8% in Jan. 2003) plus Medicare.

FERS	STRAIGHT JRS	HYBRID JRS
Full benefits	Full benefits	Full benefits; CSRS benefits may be partially reduced.
Before January 1, 1984 (by election) On/after Jan. 1, 1984 (automatic, or by election with 6 months of appointment if vested in CSRS)	Appointed any date (by election up to 30 days prior to retirement or separation)	On/before Nov. 15, 1988 (by election up to 30 days prior to retirement or separation)
5 years	8 years	1 month (JRS portion) 5 years (FERS/CSRS portion)
Same as full CSRS	No (only judge service credited)	See straight JRS, FERS and CSRS
Yes (partial credit)	No	See straight JRS, FERS, and CSRS
1.2% of salary (increasing to 1.3% in 2001, returning to 0.8% in Jan. 2003) plus Social Security plus Medicare.	1% of salary for 14 years of full-time judge service on/after Oct. 1, 1979	1% of salary for full-time judge service (JRS portion)

COMPUTATION OF ANNUITY	FULL CSRS	OFFSET CSRS
SALARY ON WHICH ANNUITY IS BASED	"High three" average salary	Same as full CSRS
CREDIT FOR EACH YEAR OF SERVICE	2.5% (judge service; five years of creditable military service) 2.0% (federal civilian service, if at least 10 years of judge service completed) 1.5-2.0% (federal service, if less than 10 years of judge service also completed)	Same as full CSRS, but annuity offset by that portion of Social Security benefits attributable service covered by both CSRS and Social Security
MINIMUM AGE FOR IMMEDIATE ANNUITY	55 (30 years service) 60 (20 years service) 60 (10 years judge service only) 62 (5 years service) 50 (20 years service) or any age (25 years service) if discontinued service annuity	Same as full CSRS
MINIMUM AGE FOR DEFERRED ANNUITY	62	62

FERS	STRAIGHT JRS	HYBRID JRS
Same as full CSRS	Salary of the office at the time of retirement	Salary of the office at the time of retirement (service covered under JRS) “High three” average salary (service covered under FERS or CSRS)
1.1% (if 20 or more years of FERS service and judge is age 62 or older) 1.75 (Congressional service) 1.0% (all others)	Proportion of salary (take the total number of years and months of creditable judicial service, not exceeding 14, and divide by 14)	See straight JRS, FERS, and CSRS
55-57 (30 years service) 60 (20 years service) 62 (5 years service) 50 (20 years service) or any age (25 years service) if discontinued service annuity 55-57 (reduced annuity with at least 10 but less than 30 years service)	65	Same as straight JRS, FERS, and CSRS
62 (between 5 and 10 years of service) 55-57 (reduced annuity for 10 or more years of service)	65	Same as straight JRS, FERS, and CSRS

OTHER CONSIDERATIONS	FULL CSRS	OFFSET CSRS
DISABILITY BENEFITS: MINIMUM CIVILIAN SERVICE TO VEST	5 years	Same as full CSRS
SURVIVORS ANNUITY	Yes (after 18 months)	Same as full CSRS
PENALTIES FOR EARLY RETIREMENT	Yes (annuity reduced 2% for each year judge is under 55)	Same as full CSRS
COLA	Yes (Consumer Price Index)	Same as full CSRS
CONTRIBUTIONS TO THRIFT SAVINGS PLAN	Up to 5% of salary, tax- deferred (no government matching)	Same as full CSRS
APPOINTMENT TO ARTICLE III JUDGESHIP	If vested, benefits transfer (unless a refund of contribu- tions is elected)	Same as full CSRS
PENALTIES FOR PRACTICE OF LAW AFTER RETIREMENT	None	None

FERS	STRAIGHT JRS	HYBRID JRS
18 months	5 years	Same as straight JRS
Yes (after 18 months for children, reduced by Social Security benefits payable; after 10 years for spouse; spouse receives basic death benefit after 18 months)	No (must elect JSAS)	No (JRS: must elect JSAS) Yes (CSRS/FERS)
No (unreduced annuity is supplemented until age 62) Yes (if reduced annuity, annuity is reduced 5% for each year judge is under 62)	Yes (If judge fails to seek reappointment, annuity is reduced 2% for each year judge is under 65, up to a maximum of 20%)	Same as straight JRS, CSRS, and FERS
Yes, beginning at age 62 (based on Consumer Price Index, e.g., if CPI equals 3% or more, increase is CPI minus 1%)	Yes (Consumer Price Index)	Same as straight JRS, CSRS, and FERS
Up to 10% of salary, tax-deferred; up to 5% matched by government (subject to IRS ceiling)	Up to 5% of salary, tax-deferred (no government matching)	Up to 5% of salary, tax-deferred (no government matching)
Same as full CSRS	Vested benefits transfer, but forfeited upon taking senior status or retiring from office under Rule of 80 (judge entitled to refund of contributions)	Same as straight JRS CSRS/FERS benefits transfer if vested (payable upon taking senior status)
None	Yes (1) Annuity frozen if notice given to AO (2) Annuity forfeited if no notice given to AO	Yes (JRS portion) No (FERS/CSRS portion)

Appendix B

RETIREMENT AND SURVIVORS' ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT OF 1988

This appendix contains the provisions of the Judicial Retirement System established by the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Pub. L. No. 100-659, 102 Stat. 3918, as amended.

§ 377. Retirement of bankruptcy judges and magistrates

- (a) Retirement based on years of service.** - A bankruptcy judge or magistrate to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate leaves office.
- (b) Retirement upon failure of reappointment.** - A bankruptcy judge or magistrate to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if -
 - (1)** such judge or magistrate has served at least 1 full term as a bankruptcy judge or magistrate, and

- (2) not earlier than 9 months before the date on which the term of office of such judge or magistrate expires, and not later than 6 months before such date, such judge or magistrate notified the appointing authority in writing that such judge or magistrate was willing to accept reappointment to the position in which such judge or magistrate was serving. For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate, such notice shall be given to the chief judge of the district court in which the magistrate is serving.
- (c) **Service of at least 8 years.** - A bankruptcy judge or magistrate to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by $\frac{1}{6}$ of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.
- (d) **Retirement for disability.** - A bankruptcy judge or magistrate to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.
- (e) **Cost-of-living adjustments.** - A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.
- (f) **Election; annuity in lieu of other annuities.** - A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate

elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive¹

- (1) any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, for service performed as such a judge or magistrate or otherwise;
- (2) an annuity or salary in senior status or retirement under section 371 or 372 of this title;
- (3) retired pay under section 7447 of the Internal Revenue Code of 1986; or
- (4) retired pay under section 7296 of title 38.

(g) Calculation of service. - (1) For purposes of calculating an annuity under this section -

- (A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and
- (B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

(h) Covered Positions and Service. - This section applies to -

- (1) any bankruptcy judge appointed under -
 - (A) section 152 of this title;
 - (B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

- (C) section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549); and
- (2) any United States magistrate appointed under section 631 of this title, only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.
- (i) **Payments Pursuant to Court Order.** - (1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.
- (2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.
- (3) As used in this subsection, the term “court” means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.
- (j) **Deductions, Contributions, and Deposits.** -
- (1) **Deductions.** - Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers’ Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate shall terminate upon the retirement of the bankruptcy judge or magistrate or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.
- (2) **Consent to deductions; discharge of claims.** - Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed

to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

- (k) Deposits for prior service.** - Each bankruptcy judge or magistrate who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.
- (l) Individual retirement records.** - The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate from whom such amounts are received, for credit to the Judicial Officers' Retirement Fund.
- (m) Annuities affected in certain cases.** -

 - (1) Practicing law after retirement.** -

 - (A) Forfeiture of annuity.** - Subject to subparagraph (B), any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.
 - (B) Forfeiture not to apply where individual elects to freeze amount of annuity.** - **(i)** If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section -

 - (I)** subparagraph (A) shall not apply to such bankruptcy judge or magistrate beginning on the date such election takes effect, and
 - (II)** the annuity payable under this section to such bankruptcy judge or magistrate, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate is entitled on the day before such effective date.

- (ii) An election under clause (i) -
 - (I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and
 - (II) shall be filed with the Director of the Administrative Office of the United States Courts. Such an election, once it takes effect, shall be irrevocable.
 - (iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.
 - (2) **Recall not permitted.** - Any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.
 - (3) **Accepting other employment.** - Any bankruptcy judge or magistrate who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term "compensation" includes retired pay or salary received in retired status.
- (n) Lump-sum payments. -**
- (1) **Eligibility.** - **(A)** Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate and -
 - (i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;
 - (ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;
 - (iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and
 - (iv) will not become eligible to receive an annuity under this section within 31 days after filing the application; is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.
 - (B)** Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons

surviving the bankruptcy judge or magistrate and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term “judicial official” as used in subsection (o) of section 376 shall be deemed to mean “bankruptcy judge or magistrate”.

- (C) If a bankruptcy judge or magistrate dies before receiving an annuity under this section, the lump-sum credit shall be paid.
- (D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.
- (E) If a bankruptcy judge or magistrate who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.
- (F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate shall be paid to that individual.
- (G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

(2) Spouses and former spouses. - (A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G) -

- (i) may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate are notified of the bankruptcy judge’s or magistrate’s application; and
- (ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if -

- (I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and
 - (II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge's or magistrate's spouse or former spouse to any portion of an annuity under subsection (i).
 - (B) Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.
 - (C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).
- (3) **Definition.** - For purposes of this subsection, the term "lump-sum credit" means the unrefunded amount consisting of -
- (A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate;
 - (B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate covering earlier service; and
 - (C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o); but does not include interest -
 - (i) if the service covered thereby aggregates 1 year or less; or
 - (ii) for the fractional part of a month in the total service.
- (o) **Judicial Officers' Retirement Fund.** -
- (1) **Establishment.** - There is established in the Treasury a fund which shall be known as the "Judicial Officers' Retirement Fund". The Fund is

appropriated for the payment of annuities, refunds, and other payments under this section.

(2) Investment of fund. - The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(3) Unfunded liability. - **(A)** There are authorized to be appropriated to the Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

(B) For purposes of subparagraph (A), the term "unfunded liability" means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers' Retirement Fund over the sum of -

(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrates; plus

(ii) the balance in the Fund as of the date the unfunded liability is determined. In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

Appendix C

THE REGULATIONS OF THE DIRECTOR IMPLEMENTING THE RETIREMENT AND SURVIVORS' ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATE JUDGES ACT OF 1988

The following regulations are promulgated pursuant to section 604(a)(18) of title 28, United States Code, to implement the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (Pub. L. No. 100-659). The regulations became effective on May 1, 1989 and were amended in January 1998 and April 2000.

SECTION 1. GENERAL PROVISIONS

1.01 Definitions

For purposes of these regulations:

- (a) Judicial Officer means: (1) a bankruptcy judge appointed under (A) section 152 of title 28, United States Code; (B) section 34 of the Bankruptcy Act before its repeal; (C) section 404 of the Act of November 6, 1978 (Pub. L. No. 95-598); or (2) a magistrate judge appointed under section 631 of title 28, United States Code.
- (b) Director means the Director of the Administrative Office of the United States Courts or the Director's designee.
- (c) Retirement Act means the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (Pub. L. No. 100-659).
- (d) CSRS means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code.
- (e) FERS means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.
- (f) JSAS means the Judicial Survivors' Annuities System as described in section 376 of title 28, United States Code.

- (g) Administrative Office means the Administrative Office of the United States Courts.
- (h) Year means 365 calendar days.
- (i) Judicial Officers' Retirement Fund means a fund established in the Treasury, appropriated for the payment of annuities, refunds, and other payments under the Retirement Act, as described in section 377(o) of title 28, United States Code.

SECTION 2. CREDITABLE SERVICE

2.01 Full-time Judicial Service

- (a) Service as a full-time judicial officer performed on or after October 1, 1979, is creditable for purposes of calculating an annuity under section 377 of title 28. Credit for any period of service may not be allowed for purposes of an annuity under section 377 of title 28 unless an amount equal to one percent of the salary received for that service has been withheld or deposited in the Judicial Officers' Retirement Fund in accordance with section 5 of these regulations.
- (b) Service as a full-time judicial officer who performed the duties of a magistrate judge and a bankruptcy judge at the same time on or after October 1, 1979 shall be included as creditable service for purposes of calculating an annuity under section 377 of title 28.
- (c) Service which is performed by a retired bankruptcy judge or a retired magistrate judge recalled under section 155(b) or 636(h) of title 28 is not creditable for purposes of calculating an annuity under section 377 of title 28.

2.02 Calculation of Service

- (a) For purposes of calculating an annuity under section 377 of title 28 each full month (30 calendar days) of service as a full-time judicial officer shall be credited as one-twelfth of a year.
- (b) Any fractional part of a month shall not be creditable.

SECTION 3. ELIGIBILITY AND PAYMENT OF AN ANNUITY UNDER § 377 OF TITLE 28

3.01 Eligibility

The Retirement Act applies to judicial officers who leave office on or after November 15, 1988.

3.02 Years of Service and Age Requirements

- (a) A judicial officer who leaves office after attaining the age of 65 and who has completed at least eight years of service creditable under subsection 2.01 of these regulations, whether continuously or otherwise, is eligible to receive an annuity

as computed under subsection 4.01 (a) of these regulations during the remainder of the lifetime of the judicial officer.

- (b) A judicial officer covered under the Retirement Act who leaves office before age 65 and who has completed at least eight years of service creditable under subsection 2.01 of these regulations, whether continuously or otherwise, is eligible to receive an annuity as computed under subsection 4.01(b) and (c) of these regulations upon attaining the age of 65. Such an annuity shall be paid to the judicial officer during the remainder of the lifetime of the judicial officer.

3.03 Election

- (a) Coverage under the Retirement Act is optional at the election of a judicial officer. The election to be covered under the Retirement Act may be made at any time, but no later than thirty days before the date the judicial officer leaves office.
- (b) A judicial officer shall notify the Director of his or her election to be covered under the Retirement Act in accordance with the procedures of this subsection.
- (c) The election of a judicial officer to be covered under the Retirement Act is irrevocable.
- (d) The Administrative Office shall prescribe and furnish necessary forms to be used by a judicial officer to make the election.

3.04 Entitlement and Payment

- (a) An application to receive an annuity under section 377 of title 28 shall be filed by the judicial officer at least thirty days prior to the judicial officer's 65th birthday or the date the judicial officer leaves office, whichever is later, on a form prescribed by the Administrative Office.
- (b) An annuity under section 377 of title 28 of a judicial officer who complies with paragraph (a) of this subsection commences (1) on the 65th birthday of the judicial officer; or (2) on the day after the judicial officer leaves office, whichever is later.
- (c) An annuity accrues on a daily basis. One-thirtieth of the monthly rate constitutes the daily rate.

3.05 Practice of Law After Leaving Office/Forfeiture of Annuity

- (a) A judicial officer who leaves office and who thereafter practices law shall forfeit all rights to an annuity under section 377 of title 28 for all periods beginning on or after the first day on which he or she practices law.
- (b) The forfeiture under paragraph (a) shall not apply to a judicial officer who notifies the Director on a form prescribed by the Administrative Office of his or her election to practice law after leaving office. The annuity payable under section 377 of title 28 for periods beginning on or after the date such election takes effect

shall be equal to the annuity which such judicial officer is entitled to receive on the day before such effective date. Thus, the amount of the annuity is permanently frozen when the election to practice law takes effect, subject to subsection 9.01(b) of these regulations.

- (c) An election by the judicial officer under paragraph (b) shall take effect on the first day of the first month following the month in which the election is received by the Administrative Office. The election is irrevocable once it takes effect.
- (d) For purposes of this subsection, the practice of law means appearing for any other person as attorney in any court, or preparing for any other person any deeds, mortgages, contracts, assignments, discharges, leases, trust instruments or any other instruments affecting real or personal property or any interest therein, or any wills, codicils, or any other instruments affecting the disposition of property of decedents' estates, or any pleadings of any kind in any action brought before any court, or preparing or expressing formal opinions or consulting with respect to any of the foregoing or on any other matters of law, including any matter relating to a proceeding brought under title 11 of the United States Code, for compensation.

SECTION 4. COMPUTATION OF AN ANNUITY UNDER § 377 OF TITLE 28

4.01 Computation

- (a) Except as otherwise provided by this subsection, the annuity of a judicial officer under section 377 of title 28 is equal to that proportion of the salary being received at the time the judicial officer leaves office which the total number of years of service (including any fraction thereof) as credited under section 2 of these regulations, not to exceed 14, bears to 14. The maximum annuity payable initially under the Retirement Act may not exceed the full salary of the judicial office at the time the judicial officer leaves office. (See subsection 9.01 of these regulations which sets forth provisions governing subsequent cost-of-living adjustments to an annuity.)
- (b) An annuity computed under paragraph (a) of this subsection shall be reduced by one-sixth of one percent for each full month that the judicial officer is under age 65 when he or she leaves office, except that such reduction shall not exceed twenty percent.
- (c) The penalty under paragraph (b) of this subsection for the separation from office of a judicial officer prior to attaining age 65 does not apply to a judicial officer who is involuntarily separated from office at the expiration of the officer's judicial term for failure to be reappointed, subject to the following conditions:
 - (1) A bankruptcy judge must notify the chief judge of the circuit in which the bankruptcy judge is serving, and a magistrate judge must notify the chief judge of the district in which the magistrate judge is serving, that he or she is willing to be reappointed to another term of office;

- (2) Notification must be in writing on a form prescribed by the Administrative Office;
- (3) Notification must be received by the appropriate circuit or district chief judge no earlier than nine months and no later than six months before the expiration of the current term of office; and
- (4) The judicial officer must have served at least one full term of office, i.e., 14 years for a bankruptcy judge or 8 years for a magistrate judge.

SECTION 5. DEDUCTIONS, CONTRIBUTIONS, AND DEPOSIT/REDEPOSIT

5.01 Salary Deductions

- (a) Beginning with the next pay period after the Director receives a notice under subsection 3.03 of these regulations that a judicial officer has elected an annuity under the Retirement Act, the Administrative Office shall deduct and withhold one percent of the salary of such judicial officer.
- (b) An amount equal to one percent of the gross salary as provided under paragraph (a) shall be deducted from the salary of the judicial officer on a pay period basis.
- (c) Amounts deducted and withheld by the Administrative Office under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers' Retirement Fund.
- (d) Deductions from the salary of a judicial officer under this subsection shall terminate upon the retirement of the judicial officer or upon completing fourteen years of service, whether continuously or otherwise, for which contributions or deposits for creditable service as described in subsection 2.01 of these regulations were made, whichever occurs first.
- (e) Each judicial officer who makes an election under subsection 3.03 of these regulations shall be deemed to consent and agree to the deductions from salary in accordance with paragraphs (a) and (b) of this subsection.

5.02 Deposit/Redeposit of Contributions for Prior Service

- (a) A judicial officer who makes an election under subsection 3.03 of these regulations to become covered under the Retirement Act may deposit or redeposit an amount equal to one percent of the salary received for service performed before the election which is creditable under subsection 2.01 of these regulations. Credit for any period of such service may not be allowed for purposes of an annuity under section 377 of title 28 until a deposit under this subsection has been made for that period, subject to subsection 5.01 (d), concerning the fourteen year maximum period of time for which contributions and deductions must be made.
- (b) To make a deposit or redeposit the judicial officer shall complete the "Application to Make Deposit or Redeposit" form, and forward the form to the Administrative

Office. The Administrative Office will calculate the amount due and notify the judicial officer of the amount due. No interest on the deposit or redeposit shall be assessed.

- (c) A deposit under this subsection may be made at any time after an election under subsection 3.03 of these regulations, but must be made no later than thirty calendar days before the judicial officer leaves office. Each such judicial officer may elect to make such deposits or redeposits in installments, provided that no installment may be smaller than an amount necessary to cover at least twelve months of service, unless the remaining service eligible for an annuity under the Retirement Act is less than twelve months. Any deposits made on the installment basis must be made or completed no later than thirty days before the judicial officer leaves office.
- (d) Deposits or redeposits by the judicial officer under this section shall be applied to the earliest service performed by the judicial officer that is eligible for credit under section 377 of title 28, unless specified otherwise by the judicial officer. Service creditable under subsection 2.01 of these regulations for purposes of an annuity under section 377 of title 28 which is performed on or after the date specified under this subparagraph by the judicial officer (as the earliest service for which a deposit is to be applied) shall not be included for computing an annuity under CSRS or FERS in accordance with subsection 8.01(f) of these regulations.
- (e) Upon the resumption of office, a former judicial officer may make a redeposit of any monies previously refunded under section 13 of these regulations.

5.03 Individual Retirement Records

- (a) The amounts deducted and withheld under subsection 5.01 and the amounts deposited under subsection 5.02 shall be credited to individual accounts in the name of each judicial officer from whom such amounts are received for credit to the Judicial Officers Retirement Fund.
- (b) The Administrative Office shall establish retirement records for all incumbent and newly appointed judicial officers. Such records shall include the judicial officer's name, social security number, date of birth, position title, service computation date (with respect to judicial officer service), salary history (including the effective date of all salary changes), the effective date of coverage under the Retirement Act, cumulative deductions under subsection 5.01, deposits and redeposits received under subsection 5.02, and the date on which retirement deductions cease in accordance with subsection 5.01 of these regulations.

SECTION 6. RIGHTS UNDER CSRS/FERS

6.01 Forfeiture of Benefits

- (a) A judicial officer is not entitled to receive any annuities, including disability and survivorship annuities, which the judicial officer would otherwise be entitled to receive under CSRS or FERS (excluding any annuity the judicial officer would otherwise be entitled to receive under subchapters III and VII of chapter 84 of title 5 regarding an annuity distributed from a Thrift Savings Plan account) upon an election to be covered under section 377 of title 28, except as provided by section 6 of these regulations (alternative hybrid annuity).
- (b) Upon an election to be covered under section 377 of title 28, the judicial officer will not be subject to deductions and contributions to the Civil Service Retirement and Disability Fund.

6.02 Lump Sum Refund of Prior Contributions

A judicial officer electing coverage under section 377 of title 28, may apply to the Office of Personnel Management for a lump-sum credit in accordance with the provisions of section 8342(a) or 8424 of title 5, United States Code.

6.03 Reduction of Annuity Under Section 377 of Title 28 to Recover Government Contributions to the Thrift Savings Plan

- (a) If a judicial officer elects to be covered under the Retirement Act after having been covered under FERS, the judicial officer's annuity under section 377 of title 28 will be reduced by the amount of the Government's contributions to the judicial officer's Thrift Savings Plan Account during the years of service as a full-time judicial officer under FERS.
- (b) The reduction under paragraph (a) of this subsection shall commence with the first monthly payment of an annuity under section 377 of title 28, unless a judicial officer timely notifies the Director on a form prescribed by the Administrative Office that the judicial officer has deferred any distribution from his or her Thrift Savings Plan Account. In the event of such notice, the reduction under paragraph (a) of this subsection will commence with the first monthly payment of an annuity under section 377 of title 28 that occurs after the month that a distribution is received from the judicial officer's Thrift Savings Plan Account. For purposes of this subsection, the term "distribution" means receipt of any portion of a Thrift Savings Plan Account by single payment, a series of monthly payments, a lifetime annuity, or a transfer of any portion of a Thrift Savings Plan Account to an Individual Retirement Account or other eligible retirement plan.
- (c) The reduction under paragraph (a) of this subsection will be divided equally over the first twelve months of annuity payments. If the reduction exceeds fifty

percent of the annuity of a judicial officer under section 377 of title 28 payable during the first twelve months, the offset will be divided equally over the first twenty-four months. For those judicial officers who notify the Director that they have deferred any distribution from their Thrift Savings Plan Account, the “first twelve months” and “first twenty-four months” refer to those months of annuity payments that occur after the month that a distribution is received from the judicial officer’s Thrift Savings Plan Account.

- (d) The reduction under paragraph (a) of this subsection shall not include earnings attributable to the Government’s contributions to the judicial officer’s Thrift Savings Plan Account.
- (e) If a judicial officer dies before the reduction under paragraph (a) is completed, all unrecovered contributions are considered a debt to the government. Such contributions will be collected by the Administrative Office in accordance with the debt collection procedures set forth in 4 C.F.R. Parts 101 through 105.

SECTION 7. DISABILITY RETIREMENT

7.01 Eligibility

- (a) A judicial officer who has made an election to be covered by the Retirement Act and who has served and made contributions or deposits under section 5 of these regulations for at least five years as a judicial officer, whether continuously or otherwise, shall receive an annuity under this section, if the judicial officer retires or is removed from office upon the sole ground of mental or physical disability.
- (b) If a judicial officer is removed from office upon the sole ground of mental or physical disability under section 631 of title 28 or section 152 of title 28, a copy of the order of removal shall be sent to the Director.
- (c) If a judicial officer voluntarily leaves office on the sole ground of mental or physical disability, the judicial officer shall certify in writing, in the case of a bankruptcy judge to the chief judge of the court of appeals, or in the case of a magistrate judge, to the chief judge of the district court, that he or she is permanently disabled from performing the duties of the office and shall submit documentation supporting such a claim. The respective chief judge shall send a copy of the certification, any supporting documentation, and a recommendation regarding the claim of permanent disability of the judicial officer to the Director.
 - (1) The Director shall determine the eligibility of a judicial officer for a disability annuity under paragraph (c) of this subsection, in light of the certification, supporting documentation, and the recommendation of the respective chief judge, subject to review by the Judicial Conference of the United States.

- (2) The Director may order or direct such medical or other examinations as the Director deems necessary to determine the facts relative to the nature and degree of disability, and may suspend or deny a disability annuity for failure to submit to any such examination.

7.02 Computation of Disability Annuity

- (a) A judicial officer who meets the criteria set forth in subsection 7.01 of these regulations is entitled to receive, during the remainder of his or her lifetime, an annuity equal to forty percent of the salary being received at the time of retirement or removal.
- (b) In the case of a judicial officer who has completed at least ten years of creditable service, the annuity shall be an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service (including any fraction thereof) as provided in subsection 2.02 of these regulations, not to exceed 14, bears to 14.
- (c) A judicial officer is entitled to payment of a disability annuity under subsection 7.01 of these regulations effective on the date of the receipt of the order of removal under paragraph (b) of subsection 7.01 or, if a judicial officer retires under paragraph (c) of subsection 7.01, on the date of the Director's determination of disability under paragraph (c)(1) of subsection 7.01 of these regulations.

SECTION 8. SPECIAL PROVISIONS FOR INCUMBENT JUDICIAL OFFICERS

8.01 Alternative Hybrid Annuity

- (a) A bankruptcy judge or a magistrate judge (including a part-time magistrate judge who later becomes a full-time magistrate judge or who previously had completed creditable service under section 2 of these regulations) in active service on November 15, 1988, may elect to receive an annuity for service creditable under subchapter III of chapter 83 (CSRS) or chapter 84 (FERS) of title 5, and an annuity under section 377 of title 28 as provided under this subsection. No service used in the computation of an annuity under section 377 of title 28 may also be credited in computing an annuity under CSRS or FERS.
- (b) A judicial officer shall notify the Director on a form prescribed by the Administrative Office of his or her election to receive an annuity under this subsection. The election may be made at any time, but no later than thirty days before the date the judicial officer leaves office.
- (c) A judicial officer shall specify on the election form the date on which service would begin to be credited under section 377 of title 28, in lieu of credit under CSRS or FERS. Only service under subsection 2.01 of these regulations may be credited for purposes of computing an annuity under section 377 of title 28.

- (d) The annuity for service specified by a judicial officer to be credited under section 377 of title 28 pursuant to paragraph (c) shall be computed in accordance with section 4 of these regulations (including the penalty provisions for early voluntary separation) without regard to the minimum number of years of service as a judicial officer.
- (e) The annuity for service specified by the judicial officer to be credited under CSRS or FERS under this subsection will be computed by the Office of Personnel Management in accordance with subchapter III of chapter 83, or chapter 84 of title 5, United States Code.
- (f) Any service which is eligible for an annuity under section 377 of title 28, which is performed on or after the date specified by the judicial officer under paragraph (c), may not be included as creditable service for purposes of computing an annuity under CSRS or FERS.
- (g) The aggregate annuity initially payable under this subsection may not exceed the salary of the office which is in effect on the day before the judicial officer leaves office. Once the annuity commences, it is increased by subsequent COLAs, but may not exceed the salary of an active judge. The Administrative Office will adjust the annuity payable under section 377 of title 28 in the event that the aggregate annuity exceeds the limits described in this paragraph.
- (h) A judicial officer who elects coverage under this section may apply to the Office of Personnel Management for a lump-sum credit in accordance with the provisions of section 8342(a) or 8424 of title 5, United States Code, for that period of service specified by the judicial officer to be credited under section 377 of title 28.

SECTION 9. COST OF LIVING ADJUSTMENT

9.01 Eligibility and Computation

- (a) A judicial officer who is receiving an annuity under section 377 of title 28, including the section 377 portion of an annuity payable to a judicial officer who elects the hybrid alternative pursuant to section 8 of these regulations, is entitled to cost of living adjustments to such annuity.
- (b) Notwithstanding any other provision of these regulations, a judicial officer who is receiving an annuity payable under section 377 of title 28 who notifies the Administrative Office in accordance with subsection 3.05 of these regulations of his or her election to practice law (as defined in paragraph (d) of subsection 3.05) after leaving office shall not be entitled to cost of living adjustments authorized on or after the effective date of the practice of law election. A judicial officer who elects to practice law shall be entitled to cost of living adjustments that were authorized but not paid prior to the effective date of the practice of law election

(because of the limitations described in paragraph (c)) upon a subsequent increase in the salary of the position from which the judicial officer retired or was removed. Any cost of living adjustments payable under this paragraph are subject to the limitations set forth in paragraph (c).

- (c) The cost of living adjustments under this subsection are calculated and payable in the same manner as adjustments under section 8340(b) of title 5. No annuity adjusted under this subsection may exceed the salary then payable for the position from which the judicial officer retired or was removed.

SECTION 10. RECALL

10.01 Recall Service Prohibition

A judicial officer who leaves office and thereafter practices law is not eligible for recall under section 155 (b), 375, or 636(h) of title 28, if the judicial officer also elected to be covered under the Retirement Act.

SECTION 11. PARTICIPATION IN THRIFT SAVINGS PLAN

11.01 Eligibility

- (a) A judicial officer who elects under subsection 3.03 of these regulations to be covered under the Retirement Act may participate in the Thrift Savings Plan in accordance with section 8440(a) of title 5 and regulations issued by the Federal Retirement Thrift Investment Board.
- (b) The amount contributed by a judicial officer under paragraph (a) of this subsection for any pay period shall not exceed 5 percent of basic pay for such period.
- (c) No contributions shall be made under section 8432(c) of title 5 by the Government for the benefit of a judicial officer making contributions under paragraph (b) of this subsection.

SECTION 12. JUDICIAL SURVIVORS' ANNUITIES SYSTEM (JSAS)

12.01 Coverage and Election

- (a) A judicial officer may elect to participate in the JSAS as described in section 376 of title 28, which provides that:
 - (1) The opportunity to participate in the JSAS is available only within six months after: (i) the date upon which a judicial officer takes office, or (ii) the date upon which a judicial officer marries.
 - (2) In the absence of an election, the opportunity to participate in the JSAS permanently expires. An election to participate in JSAS is irrevocable.
- (b) Only service for which an annuity under section 377 of title 28 is calculated may be used in the computation of an annuity under JSAS for a judicial officer who elects to receive a hybrid annuity under section 8 of these regulations.

- (c) The years of service performed by a judicial officer which may be creditable in calculating the amount of an annuity for such judicial officer's widow or widower under subsection (1) of section 376 of title 28 do not include those years during which the judicial officer is receiving an annuity under section 377 of title 28.

12.02 Separation From Office Before Age 65

- (a) A judicial officer who leaves office after becoming entitled to a deferred annuity under section 377 of title 28 and who elected JSAS coverage under section 376 of title 28, may continue coverage under JSAS by filing, within 90 days before leaving office, a written notification with the Administrative Office of his or her intention to remain under JSAS.
- (b) A judicial officer who files a written notification with the Administrative Office to continue participation in JSAS, agrees to contribute, during the period before the judicial officer begins to receive the annuity, an amount equal to 3.5 percent of the deferred retirement annuity. Upon commencement of the deferred annuity, the 3.5 percent statutory contribution amount will automatically be withheld from the judicial officer's annuity.
- (c) If a judicial officer fails to file a written notification with the Administrative Office to continue participation in JSAS, the judicial officer shall be deemed to have revoked his or her election into JSAS, and will receive a refund of contributions in an amount established in accordance with subsection (g) of section 376 of title 28.

SECTION 13. LUMP-SUM PAYMENTS

13.01 Definition

For purposes of this section, the term "lump-sum credit" means the unrefunded amount consisting of:

- (a) Retirement deductions made under subsection 5.01 from the salary of the judicial officer;
- (b) Amounts deposited under subsection 5.02 by a judicial officer covering earlier service; and
- (c) Interest on the deductions and deposits as calculated under section 377(n)(3)(C) of title 28.

13.02 Eligibility

- (a) Subject to section 14 of these regulations, an individual who serves as a judicial officer and:
 - (1) Who leaves office and is not reappointed as a judicial officer with a break in service of less than thirty-one consecutive days;

- (2) Who files an "Application for Refund of Retirement Deductions" with the Administrative Office for payment of the lump-sum credit; and
 - (3) Will not become eligible to receive an annuity under the Retirement Act within thirty-one days after filing the application
- is entitled to be paid the lump-sum credit.
- (b) Payment of the lump-sum credit voids all rights to an annuity under the Retirement Act based on the service on which the lump-sum credit is based, unless that individual resumes office as a judicial officer.
 - (c) Lump-sum benefits authorized by this subsection shall be paid to the person or persons surviving the judicial officer and living on the date entitlement to the payment arises, in the order of precedence set forth in § 376(o) of title 28, and in accordance with the last two sentences of § 376(o) of title 28:
 - (1) To the beneficiary or beneficiaries listed in a written "Designation of Beneficiary" form received by the Administrative Office prior to the judicial officer's death;
 - (2) If there is no such beneficiary, then to the widow or widower of the judicial officer;
 - (3) If none of the above, then to the child or children of the judicial officer and the descendent of any deceased children by representation;
 - (4) If none of the above, then to the parents of such judicial officer or the survivor of them;
 - (5) If none of the above, to the duly appointed executor, executrix, administrator, or administratrix of the estate of the judicial officer;
 - (6) If none of the above, to such other next of kin of such judicial officer as may be determined by the Director to be entitled to such payment, under the laws of the domicile of the judicial officer at the time of his or her death.
 - (d) If a judicial officer dies before receiving an annuity under the Retirement Act, the lump-sum credit shall be paid in accordance with paragraph (c) of this subsection.
 - (e) If all annuity rights under the Retirement Act based on the service of a judicial officer terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.
 - (f) If a judicial officer who is receiving an annuity under the Retirement Act dies, the amount of any accrued and unpaid annuity shall be paid in accordance with paragraph (c) of this subsection.
 - (g) The amount of any accrued and unpaid annuity owed to the judicial officer upon the termination of the annuity, except by death, shall be paid to that judicial officer.

SECTION 14. SPOUSAL RIGHTS

14.01 Notification of Current and/or Former Spouse Before Payment of Lump-sum Credit

- (a) Payment of the lump-sum credit may be made only if any current spouse and any former spouse (from whom the judicial officer was divorced after May 6, 1985) are notified of the judicial officer's application.
- (b) Notification of the former spouse will not be required if the marriage to the former spouse was of less than nine months duration or if the judicial officer has not completed a total of eighteen months of creditable service covered under the Retirement Act.
- (c) Proof of notification will consist of a statement signed and witnessed by the current and/or former spouse on a form provided by the Administrative Office acknowledging that the spouse has been informed of the judicial officer's application for refund and the consequences of the refund on the current or former spouse's possible annuity entitlement. This statement must be presented to the Administrative Office when filing the "Application for Refund of Retirement Deductions."
- (d) If the current and/or former spouse refuses to acknowledge the notification or the judicial officer otherwise is unable to obtain the acknowledgment, the judicial officer must submit:
 - (1) Affidavits signed by two individuals who witnessed the judicial officer's attempt to notify personally the current or former spouse. The witnesses must attest that they were in the presence of the judicial officer and the current or former spouse when the judicial officer gave or attempted to give the notification form to the current or former spouse and that the judicial officer's purpose should have been clear to the current or former spouse; or
 - (2) The current mailing address of the current or former spouse. The Administrative Office will attempt to notify (by certified mail-return receipt requested) the current or former spouse at the address provided by the judicial officer. The lump-sum credit will not be paid until the Administrative Office receives the signed return receipt.

14.02 Waiver of Spouse and/or Former Spouse Notification Requirement

- (a) The current and/or former spouse notification requirement will be waived upon a showing that the current and/or former spouse's whereabouts cannot be determined.
- (b) A request for waiver of the notification requirement must be accompanied by:
 - (1) A judicial or administrative determination that the current and/or former spouse's whereabouts cannot be determined; or

- (2) Affidavits by the judicial officer and two other persons at least one of whom is not related to the judicial officer, attesting to the inability to locate the current and/or former spouse and stating the efforts made to locate the current and/or former spouse.

14.03 Court Orders or Decrees Preventing Payments of Lump-Sums

- (a) Payment of the lump-sum credit to a judicial officer will be subject to the terms of any court order or decree of divorce, annulment, or legal separation, or any court or court-approved property settlement agreement pursuant to such order or decree issued with respect to any former spouse or to any current spouse, if:
 - (1) The court order or decree expressly relates to any portion of the lump-sum credit involved; and
 - (2) Payment of the lump-sum credit would extinguish entitlement of the current and/or former spouse to a survivor annuity.
- (b) For paragraph (a) of this subsection to have effect, the Administrative Office must be in receipt of the court order or decree before authorizing payment of the refund.
- (c) In the event that the Administrative Office receives two or more court orders or decrees:
 - (1) When there are two former spouses, the court orders or decrees will be honored in the order in which they were issued until the lump-sum credit has been exhausted.
 - (2) When there are two or more court orders or decrees relating to the same former spouse, the one issued last will be honored first.
- (d) In no event will the amount paid out exceed the amount of the lump-sum credit.
- (e) The Administrative Office is not liable for any payment made from money due from or payable by the Administrative Office to any individual pursuant to a court order or decree regular on its face, if such payment is made in accordance with this subsection.

SECTION 15. AUTHORITY OF THE DIRECTOR

15.01 Waiver of Regulatory Requirements

- (a) The Director for good cause shown may in his discretion waive any requirement under these regulations; provided, however, that such waiver is not inconsistent with any provision of the Retirement Act.
- (b) All requests for a waiver under paragraph (a) shall be in writing and submitted to the Director. The request shall specify the reasons and justification for such a waiver.
- (c) The decision of the Director concerning any request for a waiver under this section is final and conclusive and is not subject to review.

Appendix D

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES GOVERNING THE AD HOC RECALL OF RETIRED BANKRUPTCY JUDGES

*[Promulgated March 1985; amended September 1987, September 1988,
September 1990, March 1994, March 1996, September 1996, and September 1999]*

A retired bankruptcy judge may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which that district is located. In accordance with section 155(b) of title 28, United States Code, the following regulations are promulgated by the Judicial Conference of the United States with respect to recalled bankruptcy judges.

SECTION 1. ELIGIBILITY TO SERVE

- (a) A retired bankruptcy judge who is receiving an annuity under the provisions of chapter 83 or 84 of title 5 or § 377 of title 28, United States Code, is eligible to be recalled to serve as a bankruptcy judge on an ad hoc basis under these regulations.
- (b) Any bankruptcy judge who retires under 28 U.S.C. § 377 (the Judicial Retirement System) and who thereafter practices law shall not be eligible for recall under these regulations. (See 28 U.S.C. § 377(m)(2).)

SECTION 2. SALARY AND BENEFITS

- (a) A retired bankruptcy judge may be recalled under these regulations on either a full-time or when-actually-employed basis. A bankruptcy judge who is recalled on a full-time basis under these regulations shall receive compensation at the maximum level of pay authorized by the Judicial Conference for a full-time bankruptcy judge position, reduced by the amount of the annuity allocable to the

period of recall service under the applicable provisions of title 5, under 28 U.S.C. § 377 (excluding any offset under 5 U.S.C. § 8440b(b)(7)), or under section 2(c) of Pub. L. 100-659.

- (b) A bankruptcy judge who is recalled on a when-actually-employed basis shall receive as compensation the daily equivalent of the maximum level of pay authorized by the Judicial Conference for a full-time bankruptcy judge position, reduced by the amount of the annuity allocable to each day of recall service under the applicable provisions of title 5, under 28 U.S.C. § 377 (excluding any offset under 5 U.S.C. § 8440b(b)(7)), or under section 2(c) of Pub. L. 100-659.
- (c) For pay computation purposes, the daily equivalent of the pay of an active bankruptcy judge position shall be determined on the basis of a workweek of 40 hours and a workday of eight hours. Compensation for recalled services performed on any one day or in any one week shall not exceed pay for eight hours in a workday or 40 hours in a workweek.

SECTION 3. POWERS AND DUTIES

A retired bankruptcy judge who is recalled under these regulations shall be known and designated as a bankruptcy judge and may exercise all of the powers and duties of the office of bankruptcy judge.

SECTION 4. CONFLICTS OF INTEREST

A retired bankruptcy judge recalled to serve under these regulations shall be subject to the provisions of 28 U.S.C. § 153(b) and the Code of Conduct for United States Judges.

SECTION 5. OATH OF OFFICE

A recalled bankruptcy judge shall, prior to serving, take the judicial oath or affirmation prescribed by 28 U.S.C. § 453, as well as the constitutional oath prescribed by 5 U.S.C. § 3331.

SECTION 6. PERIOD OF SERVICE

The recall of a retired bankruptcy judge by a judicial council under these regulations shall be for a fixed period not to exceed one year and a day.¹ The council may terminate the period of the bankruptcy judge's service at any time, and it may authorize renewal of the bankruptcy judge's service for additional periods not to exceed one year and a day.

¹Law clerks and secretaries are not entitled to life, health, or retirement benefits unless the authorized appointment exceeds one year. If a bankruptcy judge is recalled for a period of one year, rather than one year and a day, it is appropriate to include in the court order authorization to specify the services of a law clerk and/or secretary for one year *and one day*, thereby affording each the opportunity to be covered by these benefits.

SECTION 7. SERVICE IN ANY CIRCUIT

- (a) A bankruptcy judge may be recalled to serve in any judicial district by the judicial council of the circuit within which such district is located.
- (b) The chief judge of a court of appeals considering the recall of a bankruptcy judge who served in a different circuit shall be entitled to full access to all pertinent information concerning such judge, and may discuss the recall assignment with the judges of the district and circuit in which the judge formerly served.

SECTION 8. ORDER OF RECALL

- (a) Upon the recall of a retired bankruptcy judge, the judicial council for the circuit in which the judge is to serve shall issue an order which specifies:
 - (1) the name of the recalled bankruptcy judge,
 - (2) that the bankruptcy judge has consented to serve,
 - (3) the district(s) to which the bankruptcy judge is assigned,
 - (4) the location(s) where the bankruptcy judge will serve,
 - (5) the powers and duties of the bankruptcy judge, and
 - (6) the specific period during which the bankruptcy judge will serve, not to exceed one year and a day.
- (b) Copies of the council's order of recall and completed appointment forms shall be forwarded immediately to the Director of the Administrative Office, c/o Chief, Bankruptcy Judges Division.

SECTION 9. RECORD OF RECALL

The appointment of a recalled bankruptcy judge shall be entered of record in the court of appeals and in each district court where the recalled bankruptcy judge is authorized to serve.

SECTION 10. STAFF

With the prior approval of the judicial council of the circuit, a recalled bankruptcy judge may be provided with secretarial, law clerk, and courtroom deputy clerk services, up to the same extent that those services are provided to a bankruptcy judge in active service in the district of recall.

SECTION 11. TRAVEL AND SUBSISTENCE EXPENSES

The place where a recalled bankruptcy judge maintains the actual abode in which the bankruptcy judge customarily lives shall constitute the judge's official duty station for purposes of calculating any travel and subsistence expenses incurred.

SECTION 12. SPACE, FACILITIES, AND SUPPLIES

Subject to the availability of funding and the approval of the judicial council of the circuit, a recalled bankruptcy judge may be provided with office and courtroom facilities. The judicial council shall consider the actual workload to be performed by the recalled judge and whether existing facilities (including shared chambers and courtrooms) are available. With the prior approval of the judicial council, equipment, stationery, and other supplies necessary for the performance of official duties will be provided to the recalled judge, unless otherwise available from existing resources.

Appendix E

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES ESTABLISHING STANDARDS AND PROCEDURES FOR THE RECALL OF UNITED STATES MAGISTRATE JUDGES

[Promulgated March 1987; amended September 1987, September 1990, September 1993, March 1994, March 1996, September 1996, September 1997, March 1998, September 1999, and March 2000]

A retired United States magistrate judge may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which the district is located. In accordance with section 636(h) of title 28, the following regulations for the ad hoc recall of retired magistrate judges are promulgated by the Judicial Conference.

SECTION 1. ELIGIBILITY STANDARDS

- (a) A retired full-time or part-time magistrate judge who is receiving an annuity under the provisions of chapter 83 or 84 of title 5 or § 377 of title 28, United States Code (or section 2(c) of Pub. Law No. 100-659), may be recalled into service as a magistrate judge.
- (b) Any magistrate judge who retires under 28 U.S.C. § 377 or section 2(c) of Public Law No. 100-659, and who thereafter practices law for compensation shall be permanently ineligible for recall service under these regulations. (See 28 U.S.C. § 377(m)(2).)

SECTION 2. POWERS AND DUTIES

A retired magistrate judge who is recalled under these regulations shall be known and designated as “magistrate judge” and may exercise all of the powers and duties of the office of magistrate judge.

SECTION 3. PERIOD OF SERVICE

The recall of a retired magistrate judge by a judicial council shall be for a fixed period not to exceed one year and one day. A retired judge may be recalled on a full-time or when-actually-employed (less than full-time) basis. The council may modify or terminate the period of service of a recalled magistrate judge at any time, and it may authorize renewal of the magistrate judge's service for additional periods not to exceed one year and one day.

SECTION 4. COMPENSATION

- (a) A retired magistrate judge who is recalled under these regulations on a full-time basis, shall receive compensation up to the maximum level of pay authorized by the Judicial Conference for a full-time magistrate judge position, reduced by the amount of the annuity allocable to the period of recall service under the applicable provisions of title 5, title 28 U.S.C. § 377 (excluding any offset under 5 U.S.C. § 8440b(b)(7)) or under section 2(c) of Pub. L. 100-659.
- (b) A retired magistrate judge who is recalled under these regulations on a when-actually-employed basis shall receive compensation at the daily equivalent of the maximum level of pay authorized by the Judicial Conference for a full-time magistrate judge position, reduced by the amount of the annuity allocable to each day of recall service provided under the applicable provisions of title 5, title 28 U.S.C. § 377 (excluding any offset under 5 U.S.C. § 8440b(b)(7)) or under section 2(c) of Pub. L. 100-659. A retired magistrate judge who is recalled on a when-actually-employed basis may not receive annual recall compensation (excluding annuity) that exceeds the salary of an active part-time magistrate judge compensated at Salary Level 1.
- (c) For pay computation purposes, the daily equivalent of the pay of a full-time magistrate judge position shall be determined on the basis of a workweek of 40 hours and a workday of 8 hours. Compensation for recalled services performed on any one day or in any one week shall not exceed pay for 8 hours in a workday or 40 hours in a workweek.

SECTION 5. WORKLOAD STANDARDS

A magistrate judge retired from office on an annuity less than the full salary of the office who is recalled on a full-time basis under these regulations is expected to perform judicial or administrative duties commensurate with the compensation received for that recall service (*i.e.*, the difference between the judge's annuity and the current salary of a full-time magistrate judge in active service).

SECTION 6. SERVICE IN ANY DISTRICT

- (a) A magistrate judge may be recalled to serve on an ad hoc basis in any judicial district by the judicial council of the circuit within which such district is located. The chief judge of the district in which the official duty station of the recalled magistrate judge at the time of retirement was located shall be notified of a request to recall such a magistrate judge outside that district.
- (b) A request for inter-circuit service (i.e., a proposed recall of a retired magistrate judge by a judicial council other than by the council of the circuit in which the official duty station of the magistrate judge at the time of retirement was located or as defined in Sec. 13) shall be forwarded through the Director to the Committee on the Administration of the Magistrate Judges System for approval.

SECTION 7. STAFF

Subject to the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with secretarial, law clerk, and courtroom deputy clerk services on a part-time or full-time basis, up to the same extent that those services are provided to a full-time magistrate judge in active service in the district of recall. The type and amount of staff authorized should be related directly to the volume and nature of the work to be performed. The judicial council should consider whether existing staff of the court can provide support services.

SECTION 8. FACILITIES, LAWBOOKS, AND SUPPLIES

Subject to the availability of funding and the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with office and courtroom facilities. The judicial council shall consider the actual workload to be performed by the recalled magistrate judge, and whether existing facilities (including shared chambers and courtrooms) are available. With the prior approval of the judicial council, lawbooks, equipment, stationery, and other supplies necessary for the performance of official duties will be provided to the recalled magistrate judge, unless otherwise available from existing resources.

SECTION 9. ORDER OF RECALL

- (a) An order of recall shall be initiated by the district court seeking the service of the magistrate judge and shall be issued by the judicial council of the circuit within which such district is located.
- (b) Upon the recall of a magistrate judge, the judicial council for the circuit in which the judge is to serve shall issue an order that specifies:
 - (1) the name of the recalled magistrate judge;
 - (2) the consent of the magistrate judge to serve;

- (3) the consent of the chief judge of the district involved;
 - (4) the district to which the magistrate judge is assigned;
 - (5) the location where the magistrate judge will serve; and
 - (6) the beginning and ending dates of the period during which the magistrate judge will serve.
- (c) A copy of the council's order of recall and completed appointment forms shall be forwarded to the Director.
- (d) The appointment order of a recalled magistrate judge shall be entered of record in the court of appeals for the circuit and in each district court where the recalled magistrate judge is authorized to serve.

SECTION 10. OATH OF OFFICE

A recalled magistrate judge shall, prior to serving, take the oath or affirmation prescribed by 28 U.S.C. § 453.

SECTION 11. CONFLICTS OF INTEREST

- (a) A retired magistrate judge recalled to serve under these regulations on a full-time basis, who has retired under chapter 83 or 84 of title 5, United States Code, and a retired magistrate judge recalled to serve under these regulations on a full-time or when-actually-employed basis, who has retired under 28 U.S.C. § 377 or section 2(c) of Public Law No. 100-659, are subject to 28 U.S.C. § 632(a) and the Code of Conduct for United States Judges governing full-time judicial officers.
- (b) A retired magistrate judge recalled to serve under these regulations on a when-actually-employed (less than full-time) basis, who has retired under Chapter 83 or 84 of title 5 United States Code, is subject to 28 U.S.C. § 632(b), the Code of Conduct for United States Judges governing part-time magistrate judges, and the Conflict-of-Interest Rules for Part-Time Magistrate Judges.

SECTION 12. STATISTICAL RECORD

A recalled magistrate judge shall report the number and types of duties that he or she performs to the Director in the same manner as an active magistrate judge.

SECTION 13. TRAVEL AND SUBSISTENCE EXPENSES

- (a) Except as provided in subsection (b), a recalled magistrate judge shall be entitled to reimbursement for travel and subsistence expenses incurred while on official travel in the same manner as a full-time magistrate judge in active service.
- (b) If a retired magistrate judge is recalled to service on a full-time basis for a period of one to three months in a district other than the district from which he or she retired, the judge shall be entitled to reimbursement for subsistence expenses

(lodging, meals and incidental expenses) of no more than 75% of the maximum per diem for the location where the judge is recalled. If a full-time out-of-district recall exceeds three months, reimbursement for subsistence expenses shall not exceed 60% of the maximum per diem for the location where the judge is recalled. The Director may adjust these reimbursement limits where it is demonstrated that such limits are either too high or too low to adequately compensate the retired judge for recall service in the designated location.

- (c) For purposes of computing any travel and subsistence expenses while on official travel, the official station of a recalled magistrate judge shall be the actual abode where the magistrate judge customarily lives.
- (d) When a recalled magistrate judge is holding court or otherwise transacting official business at a location where he or she normally commutes from his or her residence (official station), and such location is outside the corporate limits of that residence, then the judge is entitled to be reimbursed for both transportation and actual subsistence expenses incurred during the day (e.g., round trip mileage and lunch). When the court or other duty location is within the corporate limits of the judge's residence, then only transportation expenses between that residence and duty location may be claimed.
- (e) Any new request for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of \$50,000 is subject to the approval of the Committee on the Administration of the Magistrate Judges System.

Appendix F

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES GOVERNING THE EXTENDED RECALL SERVICE OF RETIRED BANKRUPTCY JUDGES

[Promulgated March 1992; amended September 1996 and September 1999]

A retired bankruptcy judge may, upon consent, be recalled to serve as a bankruptcy judge in any judicial district by the judicial council of the circuit within which that district is located. In accordance with section 155(b) of title 28, United States Code, the following regulations are promulgated by the Judicial Conference of the United States with respect to recalled bankruptcy judges.

SECTION 1. ELIGIBILITY TO SERVE

- (a) A bankruptcy judge who is at least 65 years of age, who has retired under the provisions of section 377 of title 28, United States Code, or section 2(c) of Public Law 100-659, and who is entitled to receive an annuity equal to the full salary of the office at the time the bankruptcy judge leaves office, shall be eligible to be recalled for extended service.
- (b) Any bankruptcy judge who retires under 28 U.S.C. § 377 (the Judicial Retirement System) and who thereafter practices law shall not be eligible for recall under these regulations. (See 28 U.S.C. § 377(m)(2).)

SECTION 2. CERTIFICATION BY JUDICIAL COUNCIL

A retired bankruptcy judge may agree to be recalled for extended service under these regulations only upon certification by the judicial council of the circuit in which the judge will be serving that substantial service is expected to be performed by such judge during the period of extended service.

SECTION 3. SALARY AND BENEFITS

- (a) A bankruptcy judge recalled on an extended service basis may receive, in addition to any annuity he or she is entitled to under the applicable provisions of 28 U.S.C. § 377 or section 2(c) of Pub. L. 100-659 (excluding any offset under 5 U.S.C. § 8440b(b)(7)), an amount equal to the difference between that annuity and the current salary of the office to which he or she is recalled.
- (b) A bankruptcy judge recalled for extended service shall be deemed to be an officer or employee in the judicial branch of the United States Government within the meaning of chapter 87 (Federal Employees' Group Life Insurance), and chapter 89 (Federal Employees' Health Benefits Program) of title 5, United States Code.

SECTION 4. CONFLICTS OF INTEREST

A bankruptcy judge recalled to extended service under these regulations shall be subject to the provisions of 28 U.S.C. § 153(b) and the Code of Conduct for United States Judges.

SECTION 5. OATH OF OFFICE

A bankruptcy judge recalled for extended service shall, prior to serving, take the judicial oath or affirmation prescribed by 28 U.S.C. § 453, as well as the constitutional oath of office prescribed by 5 U.S.C. § 3331.

SECTION 6. POWERS AND DUTIES

A retired bankruptcy judge who is recalled for extended service shall be known and designated as a bankruptcy judge and may exercise all of the powers and duties of the office of bankruptcy judge.

SECTION 7. PERIOD OF SERVICE

The judicial council of the circuit may only recall a retired bankruptcy judge under these regulations for a fixed period of more than one year but not more than three years. The judicial council may renew a recall for successive periods.

SECTION 8. REMOVAL/TERMINATION

- (a) The judicial council of the circuit in which the recalled service is performed may revoke a recall order in accordance with the procedures and the grounds specified in 28 U.S.C. § 152(e) and 372(c).
- (b) The judicial council of the circuit may revoke a recall order upon a determination that the judge's services are no longer needed.

SECTION 9. SERVICE IN ANY CIRCUIT

- (a) A bankruptcy judge may be recalled to serve in any judicial district by the judicial council of the circuit within which such district is located.
- (b) The chief judge of a court of appeals considering the recall of a bankruptcy judge who served in a different circuit shall be entitled to full access to all pertinent information concerning such judge and may discuss the extended recall assignment with the judges of the district and circuit in which the judge formerly served.

SECTION 10. ORDER OF RECALL

- (a) Upon the recall of a retired bankruptcy judge for extended service, the judicial council of the circuit in which the judge is to serve shall issue an order which specifies:
 - (1) the name of the recalled bankruptcy judge,
 - (2) that the bankruptcy judge has consented to serve,
 - (3) that the judicial council has certified that substantial service will be performed by the judge,
 - (4) the district(s) to which the bankruptcy judge is assigned,
 - (5) the location(s) where the bankruptcy judge will serve,
 - (6) the powers and duties of the bankruptcy judge, and
 - (7) the beginning and ending dates of the period during which the bankruptcy judge will serve.
- (b) A copy of the circuit judicial council's order of recall and completed appointment form shall be forwarded immediately to the Director of the Administrative Office, c/o Chief, Bankruptcy Judges Division.
- (c) The appointment order of a recalled bankruptcy judge shall be entered of record in the court of appeals and in the district court where the recalled bankruptcy judge is authorized to serve.

SECTION 11. STAFF

Upon approval of the respective circuit council, a recalled bankruptcy judge may be provided with secretarial, law clerk, and courtroom deputy clerk services, up to the same extent that those services are provided to a bankruptcy judge in active service in the district of recall.

SECTION 12. TRAVEL AND SUBSISTENCE EXPENSES

- (a) A bankruptcy judge recalled for extended service shall be entitled to reimbursement for travel and subsistence expenses incurred while on official travel in the same manner as a bankruptcy judge in active service.

- (b) The actual abode where the recalled bankruptcy judge lives shall constitute the judge's official duty station for purposes of calculating any travel and subsistence expenses incurred.
- (c) Limits may be imposed by the Director on the reimbursement of travel and per diem expenses incurred by a bankruptcy judge recalled to serve in a district other than in which his official duty station at the time of retirement was located.

SECTION 13. OFFICE AND COURTROOM FACILITIES

Subject to the availability of funding and the prior approval of the judicial council of the circuit, a bankruptcy judge recalled for extended service may be provided office and courtroom facilities. The judicial council shall consider the actual workload to be performed by the recalled judge and whether existing facilities (including shared chambers and courtrooms) are available. With the prior approval of the judicial council, equipment, stationery, and other supplies necessary for the performance of official duties will be provided to the recalled judge, unless otherwise available from existing resources.

Appendix G

REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES GOVERNING THE EXTENDED SERVICE RECALL OF RETIRED UNITED STATES MAGISTRATE JUDGES

*[Promulgated March 1993; amended September 1993, March 1994,
September 1996, September 1999, and March 2000]*

A retired United States magistrate judge may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate judge in any judicial district by the judicial council of the circuit within which the district is located. In accordance with section 636(h) of title 28, the following regulations for the extended service recall of retired magistrate judges are promulgated by the Judicial Conference.

SECTION 1. ELIGIBILITY STANDARDS

- (a) A magistrate judge who is at least 65 years of age, who has retired under the provisions of section 377 of 28, United States Code, or section 2(c) of Public Law No. 100-659, and who is entitled to receive an annuity equal to the full salary of the office at the time the magistrate judge leaves office, shall be eligible to be recalled for extended service.
- (b) Any magistrate judge who retires under 28 U.S.C. § 377 or section 2(c) of Public Law No. 100-659, and who thereafter practices law for compensation shall be permanently ineligible for recall service under these regulations. (See 28 U.S.C. § 377(m)(2).)

SECTION 2. POWERS AND DUTIES

A retired magistrate judge who is recalled under these regulations shall be known and designated as “magistrate judge” and may exercise all of the powers and duties of the office of magistrate judge.

SECTION 3. PERIOD OF SERVICE

The recall of a retired magistrate judge on an extended service basis by a judicial council shall be for a fixed period of more than one year but not more than three years. The council may modify or terminate the period of service of a recalled magistrate judge at any time, and it may renew the period of recall of a retired magistrate judge for successive periods.

SECTION 4. COMPENSATION AND BENEFITS

- (a) A magistrate judge recalled on an extended service basis shall receive, in addition to any annuity he or she is entitled to under the applicable provisions of 28 U.S.C. § 377 (excluding any offset under 5 U.S.C. § 8440b(b)(7)) or section 2(c) of Pub. L. 100-659, an amount equal to the difference between that annuity and the current salary of the office to which he or she is recalled.
- (b) A recalled magistrate judge shall be deemed to be an officer and employee in the judicial branch of the United States Government within the meaning of chapter 87 (Federal Employees' Group Life Insurance) and chapter 89 (Federal Employees' Health Benefits Program) of title 5, United States Code.

SECTION 5. CERTIFICATION OF SUBSTANTIAL SERVICE

- (a) The judicial council of the circuit within which a magistrate judge is recalled to duty on an extended service basis shall certify that the magistrate judge is expected to perform substantial service during the period of recall.
- (b) Substantial service is defined as no less than an annual workload equal to or greater than the average amount of work that a full-time magistrate judge in active service in the district would perform in three months. The following factors shall be considered by the council in determining what constitutes substantial service:
 - (1) the total time expected to be devoted by the recalled magistrate judge to the performance of official duties, including time spent on judicial proceedings, official travel, administrative work, and other court business; and
 - (2) the availability of judicial work to be assigned to a recalled magistrate judge, taking into account the volume and nature of the district's current workload, the number of district court judges and magistrate judges in the district, district judge and magistrate judge vacancies, the potential for work assignments in other districts, and any other factor that may justify additional judicial resources.
- (c) A magistrate judge recalled on an extended service basis shall consent to perform substantial service during the period of recall. The magistrate judge shall be expected to perform substantial service in other districts upon request of the

judicial council if sufficient work for the magistrate judge is not available in the district of recall.

SECTION 6. SERVICE IN ANY DISTRICT

- (a) A magistrate judge may be recalled to serve on an extended service basis in any judicial district by the judicial council of the circuit within which such district is located. The chief judge of the district in which the magistrate judge served at the time of retirement shall be notified if the magistrate judge is to be recalled to service in another district.
- (b) The chief judge of the circuit within which the official duty station of the magistrate judge at the time of retirement was located shall be notified of a request to recall or assign a recalled magistrate judge to perform duties on an extended service basis outside that circuit. A request for inter-circuit service of a recalled magistrate judge shall be submitted to the Committee on the Administration of the Magistrate Judges System for approval.

SECTION 7. STAFF

Subject to the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with secretarial, law clerk, and courtroom deputy clerk services on a part-time or full-time basis, up to the same extent that those services are provided to a full-time magistrate judge in active service in the district of recall. The type and amount of staff authorized should be related directly to the volume and nature of the work to be performed. The judicial council should consider whether existing staff of the court can provide support services.

SECTION 8. FACILITIES, LAWBOOKS, AND SUPPLIES

Subject to the availability of funding and the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with office and courtroom facilities. The judicial council shall consider the actual workload to be performed by the recalled magistrate judge, and whether existing facilities (including shared chambers and courtrooms) are available. With the prior approval of the judicial council, lawbooks, equipment, stationery, and other supplies necessary for the performance of official duties will be provided to the recalled magistrate judge, unless otherwise available from existing resources.

SECTION 9. ORDER OF RECALL

- (a) An order of recall shall be initiated by the district court seeking the service of the magistrate judge and shall be issued by the judicial council of the circuit within which such district is located.

- (b) Upon the recall of a magistrate judge, the judicial council for the circuit in which the judge is to serve shall issue an order that specifies:
 - (1) the name of the recalled magistrate judge;
 - (2) the consent of the magistrate judge to serve;
 - (3) the consent of the chief judge of the district involved;
 - (4) the district to which the magistrate judge is assigned;
 - (5) the location where the magistrate judge will serve;
 - (6) the beginning and ending dates of the period during which the magistrate judge will serve; and
 - (7) the certification of the judicial council that substantial service is expected to be performed by the magistrate judge.
- (c) A copy of the council's order of recall and completed appointment forms shall be forwarded to the Director.
- (d) The appointment order of a recalled magistrate judge shall be entered of record in the court of appeals and in each district court where the recalled magistrate judge is authorized to serve.

SECTION 10. OATH OF OFFICE

A recalled magistrate judge shall, prior to serving, take the judicial oath or affirmation prescribed by 28 U.S.C. § 453.

SECTION 11. CONFLICTS OF INTEREST

A magistrate judge recalled on an extended service basis shall not practice law and shall be subject to the provisions of 28 U.S.C. § 632(a) and the Code of Conduct for United States Judges governing full-time judges.

SECTION 12. STATISTICAL RECORDS

A recalled magistrate judge shall report the number and types of duties that he or she performs to the Director in the same manner as an active magistrate judge.

SECTION 13. TRAVEL AND SUBSISTENCE EXPENSES

- (a) Except as provided in subsection (b), a recalled magistrate judge shall be entitled to reimbursement for travel and subsistence expenses incurred while on official travel in the same manner as a full-time magistrate judge in active service.
- (b) If a retired judge is recalled to service on a full-time basis for a period of one to three months in a district other than the district from which he or she retired, the judge shall be entitled to reimbursement for subsistence expenses (lodging, meals and incidental expenses) of no more than 75% of the maximum per diem for the location where the judge is recalled. If a full-time out-of-district recall exceeds

three months, reimbursement for subsistence expenses shall not exceed 60% of the maximum per diem for the location where the judge is recalled. The Director may adjust these reimbursement limits where it is demonstrated that such limits are either too high or too low to adequately compensate the retired judge for recall service in the designated location.

- (c) For purposes of computing any travel and subsistence expenses while on official travel, the official station of a recalled magistrate judge shall be the actual abode where the magistrate judge customarily lives.
- (d) When a recalled magistrate judge is holding court or otherwise transacting official business at a location where he or she normally commutes from his or her residence (official station), and such location is outside the corporate limits of that residence, then the judge is entitled to be reimbursed for both transportation and actual subsistence expenses incurred during the day (*e.g.*, round trip mileage and lunch). When the court or other duty location is within the corporate limits of the judge's residence, then only transportation expenses between that residence and duty location may be claimed.
- (e) Any new request for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of \$50,000 is subject to the approval of the Committee on the Administration of the Magistrate Judges System.

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